

Marcello Trebitsch

Silver's daughter a target in husband's fraud probe

New York Post

By Jamie Schram, Kevin Sheehan and Bruce Golding

April 14, 2015 | 11:29pm

Former Assembly Speaker Sheldon Silver's daughter is under investigation and will likely face charges in the alleged \$7 million Ponzi scheme that got her husband busted, a law-enforcement source told The Post on Tuesday.

Michelle Trebitsch, 37, "is involved" and "most likely will squeeze a plea [deal]," the source added.

Trebitsch's husband, Marcello Trebitsch, was charged Monday with running a five-year fraud that scammed a Maryland-based developer and his accountant with promises of double-digit profits from trades in large-cap stocks.

According to court papers, Michelle met with the developer in 2009 at a Manhattan restaurant where she said she co-owned her husband's investment fund, Allese Capita LLC, "and that she was a CPA and maintained the books and records for Allese."

Michelle, who has six kids with Marcello, also held some of the bank and brokerage accounts into which he allegedly plowed his loot, and in 2010 she moved about \$422,000 in illegal proceeds that he deposited into an account she controlled under the name Israeli Car Rental Co., the complaint against him alleges.

Sources have said the securities and wire fraud charges against Marcello are not connected to the pending corruption charges that forced Silver, a Manhattan Democrat, to quit his longtime speaker post in disgrace.

Meanwhile, a series of online videos show Marcello, 37, pontificating at length about Jewish law — including one posted Tuesday, a day after his arrest by the FBI.

Marcello, identified as Rabbi Yair Trebitsch, is featured in 71 videos at the "Torah Anytime" Web site, which offers free, daily lessons from more than 400 rabbis and other speakers.

In his videos, Marcello — wearing a yarmulke, glasses, and jacket and tie — rocks back and forth or side to side while seated behind a table with a book stand and an open book on top.

He liberally sprinkles his English commentaries with Hebrew words and phrase.

Almost all of the videos are at least 30 minutes long, while several last around an hour.

According to the feds, Marcello lost what little cash he actually spent on stocks, and he mainly used his victims' money to repay the developer \$2.2 million and "for his own personal benefit."

The evidence against him includes a handwritten note, found in a suitcase at his Brooklyn home, that says, "Nothing that I can say can justify what I have done," along with a bogus balance sheet tallying his victims' "investments," court papers say.

Marcello, Michelle, and Marcello's defense lawyer would not comment.

Additional reporting by Rich Calder

Complex Frauds and Cybercrime

Rudy Kurniawan

Rudy Kurniawan appeals wine fraud conviction

Rudy Kurniawan has appealed against his conviction for making and selling millions of dollars-worth of fake fine wines in his Los Angeles home.

Decanter

By Chris Mercer

Thursday 16 April 2015

One of Kurniawan's defence lawyers, Jerry Mooney, confirmed to Decanter.com that an appeal was filed with a New York court on 10 April.

Kurniawan, also known as Dr Conti for his prolific counterfeiting of rare Domaine de la Romanee-Conti wines, is currently serving a 10-year prison sentence in the US after being convicted in December 2013 of making and selling fake wines - plus fraudulently attempting to get a \$3m loan.

If his appeal is successful, there could be a re-trial. Government officials have until 10 July to respond to the appeal filing, Mooney said. It could be the end of the year before a final ruling is made.

In the appeal document, Kurniawan's lawyers have returned to a previous argument that the FBI search on the Indonesian's Los Angeles home in 2012 was illegal, because officers had not secured the appropriate warrant.

To verify that Kurniawan lived at the address, the document says that one FBI officer knocked on Kurniawan's door on 7 March and pretended to be a neighbour who had lost a pet.

On the next day at 6am, the FBI raided Kurniawan's home, forced him and his 'frail' mother to stand outside during the process, and subsequently arrested him. He was in custody from that point onwards.

Kurniawan's lawyers argued that the conviction for making and selling counterfeit wines should be dismissed - because the FBI did not have the proper warrant at the time of the arrest - and that the second conviction for fraudulently obtaining a \$3m loan would then automatically be unsafe.

Separately, the appeal document also says that the impact on Kurniawan's victims has been exaggerated. 'The prices paid for the bottles of counterfeit wine greatly exaggerated the real financial impact on the purchasers,' the document says.

'That is not to say that Rudy's conduct in any way should be lauded or excused,' it adds.

Kurniawan Kicks Off Wine Fraud Appeal

The convicted counterfeiter has launched an appeal, claiming illegal search and improper indictments.

Wine-Searcher

By Don Kavanagh

Posted Thursday, 16-Apr-2015

The world's most famous convicted wine fraudster, Rudy Kurniawan, has lodged an appeal against his 10-year sentence, arguing that the search of his home at the time of his arrest was illegal and unconstitutional.

Kurniawan created headlines when he was arrested in 2012 and charged with mail and wire fraud over the supply and sale of counterfeit wines over a seven-year period. He was also charged with fraudulently obtaining a loan and was convicted on both counts in 2013. He was sentenced – after several delays – in August last year.

Lawyers for Kurniawan filed the appeal in New York this week, raising three main points – that the search of Kurniawan's apartment was impermissible, that the mail and wire fraud charges were improperly laid and that the order for reparation – \$29 million – was improperly arrived at.

The main thrust of the appeal centers on the search of the home following Kurniawan's arrest on March 28, 2012. FBI agents arrived at his door with an arrest warrant and arrested him on the porch of his property. Agents also removed Kurniawan's "4' 8", frail elderly mother" from the property before searching it and discovering counterfeit labels, empty bottles and other evidence of Kurniawan's fraud. They later obtained a search warrant for the property.

However, the appeal argues that the initial search was a breach of Kurniawan's rights under the Fourth Amendment, as the arrest warrant did not give agents the right to search the property and, therefore, any evidence collected should have been suppressed. That was argued at the original trial, but dismissed.

The second prong of the appeal is what Kurniawan's attorneys describe as the "improper" bundling of six discrete events into one indictment. The events are instances where Kurniawan sold counterfeit wines and cover a period from 2005 to 2012. The appeal notes that if the offences had been charged individually, only two would have been allowed under the statute of limitations. That was also argued and dismissed at the original trial.

The third element concerns the amount of compensation awarded. Kurniawan's attorneys argue that since the people who bought the wines were high-net-worth individuals, the financial impact was lower and that should have been taken into consideration when sentencing was carried out.

Kurniawan was ordered to pay \$29.4m in restitution by the sentencing judge, including a "lump sum payment" of \$200. If he works while in prison, he will pay back \$25 per quarter.

The 85-page appeal also contains a fascinating background of the circles that Kurniawan moved in during his glory days and suggests that counterfeits were an open secret among collectors and auction houses.

"From Greenberg and the other collectors, Rudy learned that everybody expected counterfeits" the appeal claims. "In fact, part of the contest was to see who could figure out what was real and what was not. The remedies if you got a bad bottle were to drink it and point out how it was wrong or put it up for auction so that it would pass to the next guy down the line."

The prosecution has until July 10 to respond to the appeal.

Kurniawan challenges wine fraud conviction

Lawyers for Rudy Kurniawan – the man sentenced to 10 years in prison for wine fraud in 2014 after being found guilty a year earlier – have launched an appeal against his conviction that could prompt a retrial.

The Drinks Business

By Neal Baker

15th April, 2015

Filing papers to a New York City Court of Appeal on Monday, Kurniawan's legal team argue that the FBI broke the law when they searched his home, uncovering evidence that was eventually used to convict him.

They say that the evidence – which included fake Bordeaux labels and bottling equipment – should not have been presented to the court. If successful in their appeal, it could trigger a retrial or possibly early release.

Wine Spectator reports that Kurniawan, who is currently around eight months in to a record 10-year sentence for conspiracy to commit wine fraud, is arguing that his home was illegally searched by the FBI when he was first arrested in March 2012.

His legal team, led by Jerry Mooney, are also making two other related claims, namely that the results of these searches should not have been included in the trial, and that the charges against their client were improperly combined, making it unduly difficult for the jury to find him innocent.

Furthermore, they argue that the financial costs incurred by the people that Kurniawan defrauded have been greatly exaggerated, resulting in a harsher sentence.

The issue of the supposedly illegal search of Kurniawan's home came up in the initial pre-trial motion in 2012. His defence argued that when FBI officers came to arrest him, they performed a sweep of his home to ensure there were no threats. During this sweep they were presented with an obvious fake wine operation, complete with Bordeaux labels and bottling equipment.

However, they did not have a warrant to search the property until later that day, so evidence seen by officers should not have been used in the trial as they were discovered in a manner that breached his constitutional rights under the fourth amendment, according to the Kurniawan team at the time.

Despite the judge ruling in favour of the authorities in the initial trial, saying that agents "acted in good faith", this argument is now being used as the main thrust of Kurniawan's current appeal.

If the appeal is successful, Kurniawan could soon be released as it is possible judges may see the four years he will have spent in detention as enough. If this was to happen, he would be deported to his native Indonesia, according to Wine Spectator.

Judges have until July 10 to respond.

Matters of Interest

Preet Bharara and Federal Judges Trade Barbs, and Some Fear Consequences

The New York Times

By JAMES B. STEWART

APRIL 16, 2015

Preet Bharara, the United States attorney for the Southern District of New York and one of the most acclaimed prosecutors of his generation, is locked in what seems to be an escalating war of words with the federal judiciary — one that some judges fear could influence important rulings.

The tension was on ample display last week in a ruling in the public corruption case against the New York Assemblyman Sheldon Silver. The tone of the opinion left federal prosecutors seething, and the extended criticism of Mr. Bharara stunned even other judges. They fear that the same issues could surface in the related investigation of the leader of the New York State senate, Dean G. Skelos.

Mr. Silver's lawyers moved to dismiss his indictment because Mr. Bharara had orchestrated a "media firestorm" that tainted their client's right to a fair trial. Such motions are considered long shots, but Judge Valerie Caproni of Federal District Court in Manhattan wrote that Mr. Silver had a legitimate argument that the case should be thrown out because Mr. Bharara, "while castigating politicians in Albany for playing fast and loose with the ethical rules that govern their conduct, strayed so close to the edge of the rules governing his own conduct."

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Judge Caproni ultimately sided with the government, so there's no way of knowing how close she came to tossing the indictment. But the possibility she even seriously considered such a step has set off alarms among some of her fellow judges. Judge Caproni herself acknowledged that dismissing an indictment is a "drastic remedy" that is "rarely used." She also noted that the motion was not a disciplinary proceeding against Mr. Bharara. That didn't stop her from spending a good part of the opinion questioning his ethics and chastising him for his public comments about the case.

Several judges told me Mr. Bharara still enjoys, as one put it, "a deep reservoir of respect" from the judiciary, and a few conciliatory words would probably go a long way.

"We have the best bench in the country." Mr. Bharara told me when we discussed the recent tensions. "Does that mean that every member of the bench every day is exquisitely perfect? No. Everyone is a human being. On any given day, our job might be to stand up to a judge, not because it's disrespectful, but because we have a duty to represent the public interest."

Judge Caproni's opinion might not have attracted much attention were it an isolated incident. But it follows criticism of Mr. Bharara's office by the influential United States Court of Appeals for the Second Circuit in the insider trading case against the hedge fund traders Anthony Chiasson and Todd Newman, where the judges' ire was on display during oral arguments. Cases are supposed to be randomly assigned to judges, but the appellate panel suggested that Mr. Bharara had steered the case to a judge considered sympathetic to the government, a practice known as "judge shopping." Mr. Bharara emphatically denied that.

While related cases are routinely assigned to the same judge, and no one accused Mr. Bharara of explicitly violating the rules, some judges felt that Mr. Bharara had unfairly manipulated the practice to his advantage.

"This colored the panel's whole view of the case," said one judge. "Over the years, the Second Circuit and Southern District have gone to great lengths to avoid even the appearance of judge shopping. There's great sensitivity to the issue. This really stuck in people's craw."

(I interviewed several federal judges this week, all of whom said they couldn't be identified out of respect for the separation of powers between the judiciary and Mr. Bharara's office, which is a part of the executive branch. All said they hoped the tension would dissipate.)

The Second Circuit panel ruled against Mr. Bharara's office in the Chiasson and Newman case, issuing an opinion that critics have called a serious setback to efforts to curb insider trading on Wall Street. In a filing, prosecutors called the ruling "dramatically wrong," further inflaming some judges.

But the most damage may have been done last summer. At what has been described as a freewheeling, off-the-record roast for a departing prosecutor, Mr. Bharara referred to Judge Naomi Buchwald, who had just presided over his office's first loss of a major insider trading case, as "the worst federal judge" he'd ever encountered. Several of Judge Buchwald's fellow jurists were at the party.

Mr. Bharara hasn't publicly addressed the issue but has told people he was making a stab at humor, part of a longer riff on the admissibility of hearsay evidence. He also said he had expected the remarks to remain private.

Whatever Mr. Bharara's intention at the roast, his comment didn't prompt any chuckles inside the Daniel Patrick Moynihan United States Court House, where Judge Buchwald has her chambers. Even judges sympathetic to Mr. Bharara have closed ranks, with some calling Mr. Bharara a sore loser.

One judge told me this week, "Of all the things attributed to him, that's the hardest to understand."

Mr. Bharara has tried to make amends. He sent Judge Buchwald a page-and-a-half handwritten note of apology and has sought guidance on how to repair relations from Chief Judge Loretta A. Preska. At the same time, judges I spoke to said they had yet to detect much remorse.

"All of these incidents show a certain lack of humility," a judge said. "A little more deference would seem to be in order."

Other judges said the disagreement wasn't unusual, especially when a United States attorney has been in office as long as Mr. Bharara (nearly six years). They also make the point that even heated disagreements among judges, prosecutors and defense lawyers are both inevitable and healthy.

"We live in an adversary system," Chief Judge Preska told me this week. "The judge's role is to say who wins and who loses. There are always going to be disagreements with how we call it."

She said the court had "good relations" with Mr. Bharara and other prosecutors in his office and worked together with them on a variety of issues. (She declined to comment on her private discussions with Mr. Bharara.)

"We have the best judges in the country," said Richard B. Zabel, the deputy United States attorney for the Southern District. "We instruct all our assistant U.S. attorneys to treat the judges with the utmost respect and professionalism, but that doesn't mean that we shouldn't express disagreement with the court on an important point of law."

Richard J. Holwell, a former federal judge now in private practice, said, "You make decisions and you move on." Even a sharp dispute shouldn't affect "the long-term relationship of his office to the court."

Still, John C. Coffee Jr., a professor at Columbia Law School and an expert on white-collar crime, said that discord between the judiciary and prosecutors could have a subtle effect. "The danger is that the judges get together and talk, and if they decide someone is overreaching, that can color their thinking," he said.

Judges say tensions have been brewing for years, in part because of Mr. Bharara's high visibility and near-celebrity status. In 2012, a string of prominent insider trading convictions landed him on the cover of Time magazine with the headline "This Man Is Busting Wall St." The New York Post's Page Six spotlighted his appearance at this year's Vanity Fair Oscar party in Los Angeles, featuring him in the same paragraph with Jane Fonda, Angelica Huston and Steve Martin.

This grates on a sizable contingent of judges for whom the best prosecutor is a quiet one. Judging from her opinion, Judge Caproni, a former federal prosecutor, may be in this camp. Before joining the bench, she served as general counsel to the Federal Bureau of Investigation, working under Robert Mueller, a famously tight-lipped director of the agency.

But others told me this isn't the issue, and many judges acknowledge that drawing public attention to cases can be an effective law enforcement tool and especially help deter criminal behavior.

Some of Mr. Bharara's predecessors avidly courted publicity. As the United States attorney for the Southern District during the 1980s, Rudolph Giuliani "is in a class of his own" in that regard, one judge said. (And judges repeatedly reprimanded Mr. Giuliani for what they saw as grandstanding.) Over the years, there have also been many intense disputes between prominent prosecutors and judges, not only in New York but across the country.

Colleagues say Mr. Bharara is keenly aware of judges' sensibilities and a longtime student of the federal bench. He spent four and a half years as chief counsel to the Senate Judiciary Committee, where his principal responsibility was vetting judicial nominees and shepherding them through the confirmation process. And many prosecutors in his office clerked for federal judges earlier in their careers and remain close to them.

Still, one defender said Mr. Bharara's "primary responsibility isn't to keep judges happy." Nor does humility come easily to him, especially when he's convinced he's right and acting in the public interest. In one court submission, defense lawyers referred to Mr. Bharara as a "petulant rooster."

Even Robert Fiske, often held up as the consummate United States attorney during his tenure in the Southern District from 1976-80, had to make amends. In his first case as United States attorney, he clashed with Judge Henry Werker. "After the opinion came down I sent a bouquet of red, white and blue flowers to Judge Werker's chambers with a note that said, 'May our future relations be more harmonious,' Mr. Fiske recounts in his autobiography, "Prosecutor, Defender, Counselor."

After that, Mr. Fiske told me this week, "We got along very well."

Metro-area leaders to debate policy decisions

Times Herald-Record

By Judy Rife

Posted Apr. 15, 2015 at 6:42 PM

NEW YORK – The Regional Plan Association’s annual assembly will bring together civic and business leaders next week to debate the key policy decisions facing the metropolitan area.

The event, which typically draws more than 1,000 people, will be held from 8 a.m. to 4 p.m. April 24 at the Waldorf-Astoria Hotel at 301 Park Ave. Registrations start at \$150 and are being processed at www.rpa.org.

This year’s assembly will feature keynote speeches from U.S. Attorney Preet Bharara and First Deputy Mayor Anthony Shorris. Connecticut Gov. Dan Malloy, Ford Foundation President Darren Walker, Amtrak Chairman Anthony Coscia and New York Economic Development Corp. President Kyle Kimball are among the other speakers.

The topics that speakers and panels will debate are designed to complement RPA’s work on its fourth regional plan for the 31-county metropolitan area – including the Hudson Valley.

Among the topics are gentrification and housing affordability; coastal retreat in the face of climate change; new vehicle technologies such as ride-sharing and driver-less cars; public subsidies of corporate relocations; viability of manufacturing; role of nuclear power and the environmental review process.

Debate about developing new trans-Hudson transportation and transit capacity will be reserved for another day-long “summit” that the Port Authority is sponsoring on May 7 in partnership with RPA, NJ Transit, Amtrak and the Metropolitan Transportation Authority. The invitation-only summit will be streamed live at www.panynj.gov.

Cyber attacks: Inside the FBI's fight against one of America's newest threats

MSNBC

By Ari Melber

04/15/15 03:22 PM—Updated 04/15/15 04:30 PM

NEW YORK – Deep inside a fortified, 41-story building in lower Manhattan, some of the FBI's top agents and technical experts are trying to keep pace with one of the newest threats to the United States – cyber attacks.

"The odds are, unfortunately, in favor of the hacker at this point," says Leo Taddeo, special agent in charge of cyber and special operations here. "We're trying to change that."

Taddeo, who began his career on the Gambino Family Organized Crime Squad and later led New York's Counterterrorism Division, is combining traditional crime-fighting tactics with newer methods to counter virtual crime.

New York is a major target for both conventional terrorism and financial cyber crime, and while high-profile attacks like the Sony hack draw lots of attention, the mounting cyber threat to American business is often underestimated.

Cyber attacks on large companies are up by roughly 40%, according to a Symantec study released this week. Other surveys suggest most American corporations don't even know when they've been hacked. "Sometimes it's the government that detects the breach, sometimes it's someone you're connected to that detects the breach," Taddeo tells msnbc, "but in 70% of the cases, the breach is not detected by the victim."

Investigators say breaches can go undetected for months at a time, which means hackers and foreign criminals may spend months compromising a company's network without detection.

The FBI is recruiting computer experts and building out its cyber forensics department, including a national Computer Analysis Response Team, CART, which wades through a massive amount of data.

At the New York field office, technical specialists work out of a room packed with computers and data storage units, sorting through material seized from computers and phones for a range of open investigations.

A huge job

Cyber cases involve information on a scale far beyond any other crime. In the New York field office alone, over 80 terabytes of data are being processed – that amounts to over 200 warehouses of printed material, or eight times the text in the Library of Congress. Nationwide, the FBI says CART examined 10,000 terabytes of data in a single year.

It's a huge job, and the bureau wants help. "We need cyber talent – we want to encourage individuals who have a knack for cyber work meaning they're either effective hackers themselves," Taddeo says, "or they're programmers or they're forensic experts." While the bureau can't compete with Silicon Valley on salary, agents believe they have something else to offer. The job combines projects which "can't be found in the private sector," Taddeo says, and "the chance to serve your country."

Shawn Henry, the former assistant director of the FBI's cyber unit in Washington, says that even beyond the data challenge, cyber crime is difficult to solve because there are literally more suspects than any conventional crime. "In the late '80s and early '90s, when we responded to a bank robbery, the pool of suspects of those who may have robbed the bank was the number of people who were in the vicinity of the bank at the time it was

robbed,” Henry says. “Today, when a bank is robbed electronically, the pool of suspects is limited to the number of people with a \$500 laptop and an Internet connection.” He estimates that’s over a billion suspects.

Taddeo acknowledges that cyber units can face a higher rate of unsolved cases than divisions devoted to other crimes. “We want to create an atmosphere where the likelihood of being of caught is high – that is one of the ways to create an effective deterrent,” Taddeo says, “but the reality is most cyber-crimes are resource intensive.”

Federal authorities also point to aggressive prosecutions of cyber espionage and financial crime, even in complex international circumstances.

Federal prosecutors in Pennsylvania indicted five Chinese military hackers for attacking energy and nuclear interests in the U.S. last year, a domestic case with major foreign policy implications. Last May, the FBI also helped lead coordinated arrests of over 100 suspects in 19 different countries, in connection with the abuse of a hacker technology, BlackShades. Many were prosecuted in their home countries, some were extradited, and the Justice Department secured six guilty pleas. Authorities hope those kind of cases provide an international deterrent for hackers who might assume they’re beyond the reach of American law.

“I think they thought they were safe behind the borders of jurisdictions that traditionally may not have cooperated with us,” says Taddeo, discussing hackers extradited to the U.S. in the BlackShades case.

What about ISIS?

Other foreign threats, of course, are well beyond conventional deterrence.

Many intelligence analysts study whether any terror groups, such as ISIS, could carry out a cyber attack on U.S. interests. The prevailing view is that while ISIS uses social media for messaging propaganda, it does not have the technical ability to pull off a sophisticated cyber attack.

Still, terror groups like ISIS might be able to outsource the job.

Mary Galligan, who led the FBI’s investigation into the September 11 attacks before handling a cyber portfolio, says that for ISIS, “It’s a matter of can they get the tools – and what would the target be.”

The dark web

She links that challenge to another growing problem in the cyber area, the sale of contraband, hacking services and violence to anonymous bidders online. “‘Hackers for hire’ is what we are talking about,” she says, where for sums as low as “a couple of thousand dollars,” hackers may sell their services for a wide range of targets or plots. And while the notion of ISIS bidding on a U.S. cyber attack is largely hypothetical, the cyber black market for violence is not.

“You saw the FBI recently take down a case called ‘Silk Road,’” Gaillgan recalls, “where you could go onto the ‘dark web’ where you could buy guns, drugs, and assassins for hire.”

The “dark web” is a hidden part of the Internet that most people never see. Since it isn’t accessed or “indexed” by most search engines, the average web user won’t stumble across its content. While there’s nothing automatically illicit about an underground repository of web pages, part of the dark web includes websites for virtual, anonymous criminal plotting.

New York's top federal prosecutor, Preet Bharara, took the FBI's case against the Silk Road portal to court, and won a conviction against a 30-year-old techie behind the operation, Ross Ulbricht. He now faces up to a life sentence. In a February interview with MSNBC, Bharara likened Silk Road to "an open-air bazaar on the Internet for the sale of all sorts of terrible things," and he said authorities were vigilant in countering a new, virtual forum "for an old crime."

In the end, there is nothing novel about the objectives of many cyber attackers, from theft to violence or even terror. Their methods, however, pose a legal and policy challenge that requires ongoing adaptation. Surveying that task for the FBI, special agent Taddeo concluded that complexity is part of the job. "There's no one easy solution – there isn't the technology solution, there isn't a diplomatic solution to this problem," he says. "It's a long-term issue that needs to be managed effectively at all levels of government, and at all levels of our private sector partners."

America's Most-Wanted Swiss Bankers Aren't Hard to Find

At least 21 financial advisers in Switzerland charged with aiding American tax dodgers are at large

By Jesse Drucker

7:00 AM EDT

April 16, 2015

With its tan marble floors and leather-clad reception desk, the staid Zurich offices of the Julius Baer Group, one of Switzerland's largest private banks, are an unlikely place to find an alleged fugitive from American justice. And yet it's here that I meet Fabio Frazzetto. Almost four years ago a federal grand jury in Manhattan indicted Frazzetto, a longtime client adviser for the bank, charging him with conspiring to help dozens of wealthy Americans conceal hundreds of millions of dollars from the Internal Revenue Service by using undeclared accounts, code names, and foreign relatives.

When I pay an unannounced visit to Julius Baer in February, it takes only a few minutes before Frazzetto comes out and greets me, wearing a well-tailored pinstripe suit. He is polite but declines to speak at length. His legal status is "certainly uncomfortable," he says, and he can't leave Switzerland without risking arrest. His office has become something of a gilded cage. "I have a very pleasant employer," he vaguely explains. "That's what I always say." (Julius Baer declined to comment on Frazzetto's indictment.)

For decades, Switzerland has occupied an outsize role in the world of shady international finance. The country's strict secrecy laws have made it the offshore banking destination of choice for U.S. tax evaders, Russian oligarchs, Nigerian kleptocrats, and Brazilian money launderers. According to research by Gabriel Zucman, an assistant professor at the London School of Economics, Swiss banks still hold at least \$2 trillion that customers haven't declared to tax authorities in their home countries. "You're not a self-respecting Swiss bank if you don't have some dodgy money floating around your system," says Martin Kenney, an attorney in the British Virgin Islands who specializes in international fraud.

Since 2008 the U.S. Department of Justice and the IRS have been waging an uneasy war against Swiss banks that enable tax evasion. UBS Group and Credit Suisse Group have paid a combined \$3.4 billion in U.S. fines, penalties, and restitution. Wegelin, the country's oldest bank, closed its doors entirely in 2013 after pleading guilty to conspiracy to evade taxes. In a break from long-standing policy, the government of Switzerland has pledged in recent years to share bank information with tax authorities around the world. But it gets to choose the countries with which it will exchange that data—sort of the financial equivalent of the dating site Tinder, says Andres Knobel, an attorney at the Tax Justice Network, a nonprofit. "There is no way to guarantee they will exchange information," he says.

Some of the biggest Swiss banks, such as Credit Suisse, have turned over few names of customers with undeclared accounts. And they're equally reluctant to take action against their employees. Credit Suisse—which in 2014 pleaded guilty to conspiracy to help Americans file false tax returns and agreed to pay the U.S. and New York state \$2.6 billion—kept three indicted bankers on its payroll for almost three years after they were charged, despite their failure to respond in court. That ended last May when the New York State Department of Financial Services required the three bankers' employment be terminated as part of a settlement.

Swiss authorities, however, have refused to hand over any bankers—and the U.S. hasn't asked for them. At least 21 financial advisers in Switzerland under U.S. indictment remain at large, making them fugitives in the eyes of the American government. Their acts aren't considered crimes under Swiss law, so the country won't extradite or prosecute them. Several still work in the Swiss financial industry, offering tax advice and other services. Some still have U.S. clients.

The only Swiss adviser to receive a significant U.S. prison sentence? Bradley Birkenfeld, the former UBS banker who first revealed the widespread practice of Swiss banks setting up undeclared offshore accounts for wealthy Americans. None of the other Swiss bankers and lawyers who pleaded guilty have been sentenced to prison time.

I recently traveled around Switzerland, following the trail of indicted advisers and their colleagues. Some expect to spend the rest of their lives in the country, fearing arrest if they leave. Many complain that their superiors got off while they're stuck in a state of Roman Polanski-type legal limbo. Still others hide behind locked doors.

At least four I talked to have decided to face the music: pleading guilty in the U.S. and cooperating with prosecutors. What persists is an indignation about being targeted for just following orders—and a sense that, despite their indictments, the Swiss banking system remains dirty.

The drab suburb of Dietikon is a 15-minute train ride from Zurich. Across from the station sits a utilitarian cement building with a COOP supermarket on the ground floor. Emanuel Agustoni, a former Credit Suisse banker indicted in 2011, runs a tiny investment advisory firm on the third floor. Behind his desk, the wall is lined with clocks with the times in New York, Singapore, London, and other financial capitals. A flatscreen TV mounted above an espresso machine is tuned to Bloomberg Television.

When I show up, Agustoni is happy to discuss his case and talks for more than two hours. U.S. prosecutors say he helped American clients set up secret accounts while he was working for Credit Suisse. They allege he later helped them move their money to other, smaller Swiss banks to avoid detection by the Department of Justice. A round man with thick, graying hair, the 54-year-old Agustoni sits on a black faux-leather couch. His black shoes are fading. He complains that he's a scapegoat, noting that few at the bank's upper reaches have had legal trouble. He chuckles over how outgoing Credit Suisse Chief Executive Officer Brady Dougan blamed the bad behavior on "a small group" of bankers.

"Of course they knew," Agustoni says of top executives. "It wasn't just the U.S., it was all markets—South America, Asia." Blaming the banks' conduct on a handful of employees is "a cheap excuse. It's a lot of money." The bank declined to comment on that contention. (For the record, Credit Suisse is paying Agustoni's legal bills—\$1.5 million so far.) He says he had a "don't ask, don't tell" policy with clients. "I never asked, 'Do you pay taxes or not?'" he says. Pressed further, he acknowledges he "could guess" those clients weren't reporting the income on their tax returns. He worries he can't defend himself in the U.S. without violating Swiss bank secrecy laws. "I didn't do anything wrong," he says.

Agustoni's former Credit Suisse boss, Markus Walder, who ran the company's North American offshore banking business, approved his actions, he says. Walder, charged in the same indictment as Agustoni, also hasn't responded in court. He's an independent business consultant in Zurich, according to his LinkedIn page. He declined to comment.

Since he was indicted, Agustoni has lost most of his business, he says, and is down to nine customers. He used to earn about 300,000 Swiss francs a year; now his annual income is about 65,000 Swiss francs—roughly \$66,000. He drives a 2006 Citroën and says he lives in a small apartment. He's tried, and failed, to get the Swiss government to intervene on his behalf. Now he feels left out in the cold. The biggest Swiss banks have cut deals with the U.S., saved their top executives from prosecution, and "I am still on my own."

Hans Thomann, a former UBS client adviser, was indicted in 2012. The U.S. alleges Thomann, 65, conspired with UBS and Wegelin to hide bank accounts for wealthy Americans, transporting bundles of cash—as much as \$140,000 at a time. "We were never told you can't do this, you can't do that," says Thomann of his former bosses at UBS. "I was not a tax expert." (UBS declined to comment on Thomann's case.)

Thomann says he can't afford a lawyer, and UBS won't pay his bills. "The indictment has ruined my life," he says in a thick Swiss-German accent. "I lost my job, my reputation, and my health." Ruddy-faced, with a shock of gray hair, he's recovering from multiple hip operations. He takes eight medications a day and says he's losing his memory. He lives on a pension of about 40,000 Swiss francs a year—down from about 150,000 a year in earnings when he was an adviser.

Like Agustoni, Thomann insists he's a tiny part of a larger system. The only top UBS executive to face criminal charges was Raoul Weil, whom a Florida jury acquitted after barely an hour of deliberations late last year. (Weil was a fugitive for almost five years before his arrest in Bologna, Italy, in 2013.)

Asked about the numerous occasions on which he handled bundles of cash, Thomann's explanation grows cloudy. He starts talking about friends owning restaurants and dry cleaners with access to lots of cash. He "just wanted to help" his clients, he says. But what possible reason was there to transport bundles of cash? He eventually concedes: "This was a mistake I made."

Edgar Paltzer was once one of Switzerland's best-known lawyers, receiving the top ranking in legal magazines for helping rich clients minimize taxes when transferring wealth to their heirs. What was not as well known was that Paltzer was helping U.S. citizens stash money in undeclared Swiss accounts, allegedly using a web of corporations in Panama and foundations in Liechtenstein to disguise their ownership and illegally dodge U.S. taxes.

In early 2009, UBS announced a \$780 million deferred prosecution agreement with the U.S., and numerous Swiss banks began kicking out American customers holding undeclared funds, fearing the wrath of U.S. law enforcement. Paltzer saw a business opportunity. He encouraged these clients to move their accounts to Bank Frey, founded by one of his law partners. Paltzer's alleged accomplice handling this stream of customers was a young banker named Stefan Buck.

In April 2013 a U.S. grand jury indicted both men. Born and raised in Switzerland, Paltzer also holds U.S. citizenship. That eliminated the fugitive option, because Switzerland would be more likely to extradite him. Paltzer, also accused of years of other misdeeds, pleaded guilty to conspiracy to commit tax fraud and agreed to cooperate with prosecutors. He was released in New York after he signed a \$2 million bond in August of that year. He put up a \$500,000 19th century French painting, *La Gardeuse de Chèvres* (The Goat Herder), by Charles-François Daubigny, to secure his bail.

Paltzer, 58, still has a law practice, with an office on a prime stretch of Zurich's main shopping drag, the Bahnhofstrasse, across the street from UBS and Credit Suisse. He still specializes in inheritance law and uses Liechtenstein foundations. But he says he's been flattened. "What's your reaction when a tsunami hits you?" he asks. "It's simply a catastrophic period." Leaning over a meeting table complete with a vase of white, pink, and purple tulips, he wears gold-rim glasses and elegant, albeit slightly worn, attire: a slate-gray suit, a pink Hermès tie, and gold cuff links. His gray hair is thinning. As we talk, he often stares ruefully out the window at the top of nearby Fraumünster Church, rubbing his long fingers together.

\$2,000,000,000,000

Estimated value of cash and securities held by Swiss banks that customers haven't declared to authorities in their home countries

Paltzer's key to his former law firm's offices was taken away the day after his indictment. He sold a vacation home and has lost 80 percent of his clients, including all the Americans. "Lawyers didn't want to come to my office for fear the office was wiretapped," he says. Accepting payment is difficult, because several banks refuse

to transfer money to his account. "If the s--- hits the fan, you simply have to deal," he says with a joyless laugh. The date for his sentencing hasn't been set.

Buck, Paltzer's former collaborator, has refused to go to the U.S. to face the charges. He works for a number of ventures, including one seeking investors in uranium mines in Mongolia, and operates out of at least two offices: one in Zurich and another outside St. Moritz, the picturesque ski mountain resort popular with Russian oligarchs. A few months after his indictment, Buck says he spent several days meeting with federal prosecutors and IRS agents at the U.S. Embassy in Vienna. He says prosecutors offered him a deal: If he pleaded guilty, they would recommend no fine or prison time. "I'm definitely not going to plead guilty to something I didn't do," he says. He fears that going to the U.S. without an agreed-upon bail could mean months behind bars awaiting a trial. His lawyers recently proposed a \$500,000 bail package. But U.S. prosecutors rejected the overture, refusing to negotiate with Buck as long as he stays outside the country, calling him a fugitive.

Buck, 34, claims to have documentation that would disprove U.S. allegations. But "the problem with Swiss banking secrecy is I don't know if I can use that documentation for a trial," he says. "It doesn't make sense if I clear my case in the U.S. and come home and have a second case in Switzerland."

Asked if he ever travels outside Switzerland, he says obliquely: "I shouldn't. I will definitely never enter a plane." He declines to discuss his current business but says the indictment makes it impossible to work in financial services. "I'm happy that I'm in my early 30s and not 50 or 60. I'm in a better situation than most others."

Zurich has come to resemble an oversize college dorm for indicted Swiss financial professionals. I unexpectedly found one confessed tax-dodge adviser in the offices of another who also pleaded guilty. Most are wary of outsiders. Their lives go on, but they're looking over their shoulders.

Josef Dörig, a Swiss financial adviser who last year pleaded guilty to helping U.S. clients of Credit Suisse to evade taxes, agreed to cooperate with the government. His firm's offices are in a high-rise office building in Zurich's center—three floors below those of Credit Suisse's trust company. That proximity "exemplified the symbiotic relationship between" the two businesses, according to a court filing agreed to by Dörig and U.S. prosecutors.

Dörig was in his office when I visited. He's 73 years old and at high risk of a heart attack, according to a letter from his physician filed in court. Dörig, who's been permitted to travel to Italy for family vacations in Venice, Genoa, and Sardinia, wouldn't talk to me, citing his indictment. "I kindly ask you not to exist," he said. In late March he was sentenced to probation and fined \$125,000.

Felix Mathis, indicted July 2010.

My last encounter offered a glimpse into the paranoia that's the undercurrent of everyday life for some of these men. Matthias Rickenbach is a Swiss lawyer with a master's degree from the University of San Diego. Federal prosecutors say he conspired with a UBS banker to help Americans evade taxes. In 2009 a U.S. District Court judge declared him a fugitive.

Rickenbach still has his law practice, offering tax advice from a house in the tony suburb of Zollikon, just outside the Zurich city limits. The giant picture window in his corner office offers a gorgeous view of Lake Zurich. Asian art decorates the entryway. When I knock on the front door, an elderly woman, apparently Rickenbach's secretary, opens it. After I introduce myself, she retreats. A moment later, the door opens again and she hands me his business card. She then disappears once more.

Through the windows beside the door, I can see a man in a dark suit. He's pressed up against the wall on the opposite side of me, trying to avoid being seen. I can't tell if it's Rickenbach.

The woman returns a moment later and says "one of our lawyers" told her she isn't permitted to hand out the business card. After a brief tussle, she snatches it from my hand and dashes back indoors.

—With David Voreacos and Corinne Gretler

Gilberto Valle, Ex-New York Police Officer, Talks About His Cannibalism Fantasies in Film

New York Times
By BENJAMIN WEISER
APRIL 16, 2015

Months before his arrest in late 2012, Gilberto Valle, then a New York police officer, sat at his computer, hiding behind fictional online identities and exchanging messages about abducting, torturing, killing and eating women.

“When you’re behind a computer screen late at night, no one knows who you are, where you are,” Mr. Valle says in a new documentary film about his case. “I became part of this cyber-community, where people are exploring deviant thoughts and exploring their fetishes.”

“The anonymity,” he adds, “makes you try and outdo the other person: Who can be the sicker one? Who can be the more depraved one? The baby was sleeping. The mom was sleeping. There was just nothing to do.

“And then you shut the computer off and that’s it. I go back to being the regular me,” he continues. “But someone might say the anonymous nature could also bring out who you really are. In my worst nightmare, I could never guess that this would have happened.”

There may not have been a more sensational trial in Manhattan in recent years than that of Mr. Valle, who came to be widely known as the cannibal cop. He was convicted of kidnapping conspiracy in March 2013 after prosecutors persuaded a jury that he was plotting actual abductions with others in one of the darkest corners of the Internet.

Mr. Valle and his mother, Elizabeth Valle, in an image from the documentary “Thought Crimes.” Credit HBO
The film, “Thought Crimes,” which premieres on Thursday at the Tribeca Film Festival and in May on HBO, presents him for the first time speaking publicly and at length about his case, which has taken an unusual turn.

In June, the judge, Paul G. Gardephe of Federal District Court, overturned Mr. Valle’s conspiracy conviction, saying the evidence supported his contention that he was engaged in only “fantasy role-play.” The government appealed, asking that the conviction be reinstated; if that occurs, Mr. Valle could still face a life sentence. The appeal is to be argued next month.

The film’s director, Erin Lee Carr, who began interviewing Mr. Valle on camera last summer after he was released from prison, said she did not intend for the film to argue for his guilt or innocence. “It was and is very important to me that people don’t necessarily know what I think about it,” Ms. Carr said.

“What I really wanted to do was to present all the facts of the case, the damning, the enlightening, the tragic — all of the circumstances that surround the life of Gil Valle” and let the audience make up its own mind, added Ms. Carr, whose father was David Carr, the New York Times columnist who died in February.

Much of the government’s case was built around Mr. Valle’s almost unbelievably lurid and disturbing online messages about cannibalism, like one in which he described stringing a victim “up by her feet and cutting her throat.”

“Letting her bleed out then butcher her while she hangs,” he wrote.

But prosecutors claimed Mr. Valle, who used online identities like Girlmeat Hunter, took other “concrete steps,” such as using the Internet to research methods of abducting, subduing and torturing victims; using a law

enforcement database to collect information about them; and conducting surveillance. (Mr. Valle was also convicted of illegally gaining access to the database, which the defense has appealed.)

Mr. Valle's wife, who reported him to the authorities after discovering his chats about planning to torture and kill women, including herself, had testified in court, saying, "I was going to be tied up by my feet and my throat slit, and they would have fun watching the blood gush out of me."

But Judge Gardephe, in a decision overturning the conviction, wrote, "No one was ever kidnapped, no attempted kidnapping ever took place, and no real-world, non-Internet-based steps were ever taken to kidnap anyone."

Ms. Carr said she made contact with Mr. Valle in fall 2013, when he was being detained after his conviction. He is often shown in the film at his mother's residence in Queens, wearing an ankle-bracelet and at times a police T-shirt.

Mr. Valle is frequently shown cooking or eating. At one point, the film displays some of his electronic messages, such as one that says "part of me wants to put her in the oven while she is still alive, but at a very low heat," and another that says "make some bacon strips off of her belly." He is then shown cooking bacon on the stove.

The film also shows interviews with his parents, who are divorced; his federal public defender, Julia L. Gatto; a juror; and various psychiatric, legal and Internet experts. One expert, Lee Rowland, an American Civil Liberties Union lawyer, says, "The cannibal cop case really raises the big question: What is the line between thought and action, right, between fantasy and crime? And it's so gray."

Mr. Valle, who was fired from the Police Department upon his conviction, did not testify at trial and made only brief comments, including an apology, outside the courthouse. In the film, he appears relaxed and not defensive. There are "a lot of myths" about his case, he says, adding, "I want everyone to have all the facts in front of them before they make up their minds." He seems at a loss, though, to explain why he acted as he did.

"I mean, yeah, I had a stressful job, but I don't know how much that played into all that," he says. "You know, I could have gone out and got drunk. I could have stayed up and watched TV." Perhaps the "most important thing" he got out of the chats, he says, "was just acceptance."

"This is the first time I'm really opening up about all kinds of freaky stuff, you know, cannibalism and bondage. All these years, it's all bottled up. Here, I had my chance to finally talk to somebody about it.

"It was such a relief to get it off my chest. When you're typing it, you don't really think about it. You're just sort of in the moment."

But, he adds: "I'm incapable of any violence. I couldn't hurt a fly."

Mr. Valle says that he was a good husband and father and that he did well at work. His wife has since divorced him, the film says. Mr. Valle claims that just when he decided to "delete everything" from his computer, his wife installed software that allowed her to monitor his activities and ultimately discover his writings. "If I had done it a day sooner," he says, "none of this would have happened. Isn't that incredible?"

He suggests the government pursued the appeal "just to save face."

"They're smart people; they have to know I'm innocent," he says. "They have to know there's no evidence. They have to know they screwed up."

The United States attorney's office in Manhattan declined to comment.

The film concludes with Mr. Valle walking outdoors, saying he now can move around without being recognized, feels more comfortable outside and is thinking about dating again. (The film shows a Match.com page he apparently set up, which was later taken down.)

"It's been a long time, you know," Mr. Valle says. "I think sometimes I'm craving a little, you know, craving some companionship. There's nothing wrong with that." But, he says, if he did go out "with a girl, at what point in the dating process do I bring this whole thing up?" He wonders: She might "run for the hills."

"Some people are going to think I should be locked up for the rest of my life," he adds. "There's no getting around that. I made a bad mistake, a really bad mistake."

Total Failure on Speedy Trials in New York

The New York Times
By THE EDITORIAL BOARD
APRIL 15, 2015

The outrageous delays in New York City's criminal justice system were given a human face last year, when Jennifer Gonnerman, writing in *The New Yorker*, introduced readers to Kalief Browder, who was 16 when he was arrested in 2010 for a robbery he says he did not commit.

He was held for three years without trial on Rikers Island before the case was dismissed. His court dates were changed again and again and again while he was in jail. Over the years, he was battered by guards, sent to solitary confinement and eventually tried to hang himself.

Throughout the hugely inefficient system, delays are routine — caused by everything from scheduling conflicts among prosecutors and defense lawyers to failure of witnesses to show up and too few judges to hear cases.

Mayor Bill de Blasio spoke apologetically of Mr. Browder's case this week when he and the state's chief judge, Jonathan Lippman, unveiled a plan that is intended to shorten court delays, cut the jail population and prevent people from being held, sometimes for years, without trial. As of last month, more than 400 people at Rikers had been locked up for more than two years without being convicted of a crime, according to a report on Tuesday in *The Times* by Michael Schwartz and Michael Winerip.

The plan can succeed only if judges, prosecutors, defense attorneys, corrections officials and other participants in the justice system stop blaming one another for court delays and work closely together to do away with them.

The justice system plan announced this week by Mr. de Blasio and Judge Lippman calls for judges to prioritize the cases of the 1,500 or so people who have been held for more than a year without being convicted. The goal is to resolve half of those cases within six months. Cases that cannot be disposed of by plea bargain will be assigned a fixed trial date.

For this to work, corrections officials need to get inmates to court at the appointed time and police officers need to show up in court on time. Instead of seeking adjournments and delays, defense attorneys and prosecutors must be prepared and ready to proceed.

Judges who now permit too many unjustified adjournments will need to change the way they run their courtrooms.

Under the plan, each borough will have a dedicated team, led by the county's administrative judge, that will work with operations experts to figure out the causes of court delays. The teams — which will include members from City Hall, the district attorneys' offices, the defense bar and the police — will also monitor progress made on old cases and develop reforms that shorten processing times.

These teams may need to recommend changes to court hours in some places, and should seriously consider putting courtrooms on Rikers Island itself. A separate citywide body will be responsible for putting recommendations into action.

Meanwhile, too many poor defendants can end up waiting in jail for months because they cannot afford bail. State lawmakers could help by changing the bail system and creating a presumption of release for low-level offenders who present no risk to the public. A bill pending in the Legislature, and introduced by Judge Lippman, would address this problem.

(B)(6)

(B)(7)(c)

Subject: FW: TiEcon : Invitation to speak on May 16
Attachments: Preet Bharara Event Vetting Questionnaire.docx; TiEcon 2015 speaker invite Preet Bharara.doc

(B)(6)

(B)(7)(c)

Can you look at this invitation? There is no fundraising involved, so I think it's easy. Thank you.

(B)(6)

(B)(7)(c)

From: (B)(6)
Sent: Thursday, April 09, 2015 2:15 AM
To: (USANYS) (B)(6) (B)(7)(c)
Cc: (B)(6)
Subject: Re: TiEcon : Invitation to speak on May 16

Hi (B)(7)(c)

(B)(6)

As requested we have filled out the event vetting document - see attached document.
Please do not hesitate to contact me should you need any additional information.
We look forward to his participation and his photo and bio as per the specifications indicated below.

Regards

(B)(6)

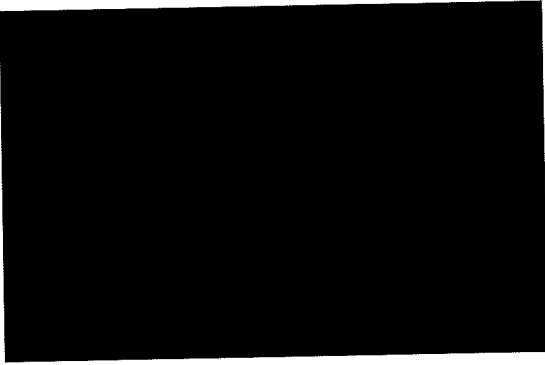
(B)(7)(c)

On Mon, Apr 6, 2015 at 10:51 AM, > wrote:

(B)(6)

Thanks for the formal invitation. The U.S. Attorney's participation however must be approved by DOJ ethics advisors, so please do not announce his participation yet. Can someone please complete the attached event vetting document?

Thank you very much,



(B)(7)(c)

(B)(6)

From: 

(B)(6)

Sent: Monday, April 06, 2015 1:57 AM

To: Bharara, Preet (USANYS);  (USANYS)

(B)(7)(c)
(B)(6)

(B)(6) **Cc:** 

Subject: TiEcon : Invitation to speak on May 16

Preet

My apologies. I had prepared the letter and the email but forgot to hit "send". It was lying as a draft in my email box.

Anyway, here is the formal invite. Your panel will be some time in the afternoon between 2 and 5pm. We will let you know within a week the precise time of the panel.

Can we also have your bio and a high resolution head shot for putting on our website?

Please also let us know if you will be open to talking to the press - ethnic as well as mainstream. Once we know your preferences, we will set it up accordingly.

Regards



(B)(6)

(B)(6)

(B)(7)(c)

Sent: Monday, April 27, 2015 5:21 PM
Subject: News Clips - Saturday-Monday, April 25-27, 2015
Attachments: 2015-04-25 to 27.pdf

News Clips
Saturday-Monday, April 25-27, 2015

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Public Corruption

Dean Skelos

Democrats ready to oust Dean Skelos if he's indicted

NY Post

By Fredric U. Dicker

April 26, 2015 | 11:41pm

State Senate Democrats will unleash a “fierce campaign” to oust Senate Majority Leader Dean Skelos if, as many Democrats and even some Republicans expect, the GOP lawmaker is indicted by US Attorney Preet Bharara on corruption charges, The Post has learned.

The ouster effort, in the planning for weeks, would use Skelos’ indictment as a springboard for an all-out attack on Republicans as a lead-up to what is expected to be a close battle next year for control of the Senate, sources said.

As part of that planned effort, Senate Democrats have enlisted the services of at least one photographer to take pictures of Skelos with other Senate Republicans, who could be damaged by the images in political advertising if Skelos is indicted, it was learned.

Republican senators have been avoiding being seen in public with Skelos, insiders said.

Democrats also hope that an aggressive effort to oust Skelos will help them cast off their own series of embarrassing scandals that saw former Senate Majority Leader Malcolm Smith (D-Queens) convicted on corruption charges in January and will see former Majority Leader John Sampson (D-Brooklyn) tried for corruption in June.

“If Dean is indicted, as we expect, there’ll be a fierce campaign to get him to step down as leader, as [indicted former Assembly Speaker] Shelly Silver was forced to do,” said a source close to Senate Democrats.

“This will be an opportunity to gain the initiative and, hopefully, gain the majority in the Senate next year,” the source continued.

A senior Senate Republican also told The Post, “I expect Dean will be indicted, and if he is, he can’t stay on as leader.”

Skelos, of Nassau County, has been the subject of an intense investigation by Bharara, who is looking into the senator’s private law practice and the possibility he used his official position to influence the awarding of a Nassau storm cleanup contract to a company that employed his son, Adam.

Maneuvering by Republicans to succeed Skelos as majority leader has been going on for weeks.

Early out of the gate was Southern Tier Sen. Catharine Young, head of the Senate Republican Campaign Committee, as well as Long Island delegation favorite Sen. John Flanagan of East

Northport, and Senate Finance Committee Chairman John DeFrancisco of Syracuse.

Gov. Cuomo's refusal Friday to endorse Democratic City Councilman Vincent Gentile in the special election for Congress to represent Staten Island and part of Brooklyn shocked many prominent state Democrats, leading one to charge, "All Cuomo cares about is himself."

The governor claimed the refusal resulted from his policy of leaving "local races to the localities," but he had, in fact, endorsed Democratic challenger Domenic Recchia Jr. last fall in his unsuccessful race against Republican Rep. Michael Grimm, who later resigned after pleading guilty to felony tax fraud.

"Gentile did something to really offend the governor. He wasn't sufficiently loyal, and this is the payback," said a prominent Democrat who knows both men.

A group of angry conservative activists in Westchester and Dutchess counties is threatening to run primary challenges against newly elected Republican Sens. Sue Serino of Hyde Park and

Terrence Murphy of Yorktown after becoming convinced they've reneged on promises to fight to slash spending, repeal the anti-gun SAFE Act, and roll back the controversial Common Core curriculum.

The group, led by Poughkeepsie-based IBM employee Christopher Zaleski, helped elect both lawmakers and now "plans to target one or two of the new senators with real strong primaries and real strong candidates, fund them and work for them and, if they can't beat them in a primary, throw their support to the Democrat, regardless of the consequences," said a Republican official familiar with the effort.

"They want to send a message that they will not tolerate lip service anymore. They demand action, or else it really doesn't matter who is technically in charge of the Senate, Republicans or Democrats," the official continued.

Dean Skelos' leadership could be short-lived: sources

BY Ken Lovett /

NEW YORK DAILY NEWS /

Monday, April 27, 2015, 5:11 AM

Here is an expanded version of the second item from my "Albany Insider" column from Monday's editions:

Even as his members are willing to give him the benefit of the doubt for now, state Senate Republican Majority Leader Dean Skelos' hold on power may not last much longer, insiders say.

Several GOP senators say Skelos, who along with his son is under investigation by U.S. Attorney Preet Bharara, could remain leader in the short-term, even if he is indicted. Many see Bharara as increasingly overzealous and much will depend on how strong or weak Skelos' members believe the case is against him, several said.

But if Skelos is indicted, or still under investigation in coming months, many expect the Nassau County Republican would likely follow the precedent of former Senate GOP Majority Leader Joseph Bruno and step down from his leadership post after the legislative session ends in June. That way he'd avoid becoming a major political liability heading into next year's crucial elections, which will determine which party controls the chamber.

The Republicans also recognize the "bad optics" of going into an election year with not only Skelos under a cloud but Deputy Senate GOP Leader Thomas Libous under indictment for lying to an FBI official.

Gov. Cuomo last week raised the issue that the ongoing investigations by Bharara has created an instability in Albany that will make it difficult to get a host of major issues done by the end of the legislative session. While he called it imperative that the laws set to expire that cover rent regulation and a tax abatement program for developers to encourage affordable housing be renewed, he said it will be difficult to make major changes to them because of the ethical cloud hovering over the Capitol.

Lovett: Attorney General Eric Schneiderman gearing up to run for governor in 2018 if Andrew Cuomo quits

NEW YORK DAILY NEWS /

Monday, April 27, 2015, 2:30 AM

Share this URL .

Louis Lanzano/for New York Daily News

State Attorney General Eric Schneiderman wants to run for governor if Andrew Cuomo doesn't seek a third term, according to a source.

ALBANY — The next election is three years away, but already a bevy of Democrats are being discussed inside political circles as potential candidates should Gov. Cuomo not seek a third term —or even if he does.

Chief among them is state Attorney General Eric Schneiderman, who those close to him acknowledge is giving serious consideration to running for governor in 2018.

It's not clear whether Schneiderman would challenge Cuomo in the primary election, but sources say the attorney general is starting to lay the groundwork to make sure he's in position should the governor decide to call it quits after two terms.

"If the governor doesn't run, he'd want to do it," said one source who speaks regularly to the Schneiderman camp. "It's his dream, but at this point they really want to know what's going to happen with Cuomo."

Another intriguing name that has been bandied about within Democratic circles in recent weeks is U.S. Sen. Kirsten Gillibrand, whose term is up at the end of 2018.

Gillibrand, a Hillary Clinton supporter believed to have future presidential aspirations of her own, could benefit from the executive experience of being governor, said several Democrats.

But while five different Democrats separately raised her name, with several saying they've heard she's privately considering it, a Gillibrand spokesman called such talk "categorically false."

Gov. Cuomo may seek a third term as his father did. But if he calls it quits, Eric Schneiderman may emerge to replace him.

Mayor de Blasio, who has usurped Schneiderman as the darling of the state's liberal left, has also been mentioned, though a number of Democrats question whether his brand could play statewide.

De Blasio backers say he's focused on spreading the liberal word for the coming presidential election and then his own 2017 reelection campaign in the city.

Other lesser-known names statewide include new Lt. Gov. Kathleen Hochul, who some say is a force but doesn't have a broad enough fund-raising base and is considered too conservative to win a Democratic primary; Syracuse Mayor Stephanie Miner; and Zephyr Teachout, the Fordham law professor who gave Cuomo a surprisingly credible challenge in last year's Democratic primary.

If anyone does make a move, it may have to be through a primary because those close to Cuomo insist the governor plans to run for a third term to see through long-term projects like the LaGuardia Airport redevelopment and upstate revitalization.

"There's no question in my mind he's going to run again," said Michael Del Guidice, who has been close to Cuomo since serving as a top aide to his father, former Gov. Mario Cuomo. "He loves government and he loves being governor. And more importantly, he likes the idea of three terms because he wants to do it and his father did it."

Mike Groll/AP

Senate Republican Leader Dean Skelos may have to step down if he's indicted.

Even as his members are willing to give him the benefit of the doubt for now, state Senate Republican Majority Leader Dean Skelos' hold on power may not last much longer, insiders say.

Several GOP senators say Skelos, who along with his son is under investigation by U.S. Attorney Preet Bharara, could remain leader in the short term, even if he is indicted. Many see Bharara as increasingly overzealous and much will depend on how strong or weak Skelos' members believe the case is against him, several said.

But if Skelos is indicted, or still under investigation in coming months, many expect the Nassau County Republican would likely follow the precedent of former Senate GOP Majority Leader Joseph Bruno and step down from his leadership post after the legislative session ends in June. That way, he'd avoid becoming a major political liability heading into next year's crucial elections, which will determine which party controls the chamber.

Former Albany Mayor Gerald Jennings, who has close ties to Gov. Cuomo, has been hired as a "consultant" for one of the groups considering seeking a license to manufacture and dispense medical marijuana in New York.

Jennings insists that despite his friendship with Cuomo, he will not do any lobbying but will instead provide advice to the group, which he would not name.

Securities and Commodities Fraud

David Riley

Funds | Mon Apr 27, 2015 4:16pm EDT

Related: Regulatory News, Markets, Mutual Fund Center, Financials

UPDATE 1-Ex-Foundry executive gets 6-1/2 years prison for insider trading

(Adds details from court hearing, background on case)

By Nate Raymond

(Reuters) - A former executive of Foundry Networks Inc was sentenced to 6-1/2 years in prison on Monday for leaking inside information about the data-equipment maker to a hedge fund analyst.

David Riley, Foundry's former chief information officer, was also fined \$50,000 by U.S. District Judge Valerie Caproni, who said the case should demonstrate the risks that from engaging in insider trading.

"The word has to be out in the business community that the results if you do get caught are catastrophic," she said.

Riley, 49, was convicted in October in the most recent in a wave of insider trading cases in federal court in Manhattan to go to trial. He told the judge at Monday's hearing in Manhattan that he continues to believe he is not guilty.

"I never intentionally or knowingly breached my fiduciary duties or broke the law," he said.

Prosecutors said Riley in 2008 tipped an analyst at Artis Capital Management about the unannounced plan for Brocade Communications Systems Inc to acquire Foundry for \$3 billion.

That tip to Matthew Teeple, along with prior tips about sales figures at Foundry that Riley allegedly supplied his friend, enabled the San Francisco-based hedge fund to earn \$39 million, prosecutors said.

A jury found Riley guilty in October on conspiracy and securities fraud charges. Teeple, 44, was sentenced later that month to five years in prison after pleading guilty to conspiracy to engage in securities fraud.

Both men are among the more than 80 people who were convicted amid an insider trading crackdown pursued since 2009 under Manhattan U.S. Attorney Preet Bharara.

The validity of some of those convictions was called into question in December when the 2nd U.S. Circuit Court of Appeals limited the ability of prosecutors to pursue insider trading cases.

The court, in reversing the convictions of hedge fund managers Todd Newman and Anthony Chiasson, ruled that prosecutors must prove a trader knew a tip's source received a benefit "of some consequence" in exchange.

Riley's lawyer, John Kaley, indicated in court Monday that the 2nd Circuit ruling would form the basis for his client's own appeal.

Riley previously urged Caproni to toss his conviction on the grounds that she had instructed jurors they could find him guilty if he provided information to maintain or further a friendship.

Caproni, though, ruled that Riley obtained at least three "concrete" personal benefits: contacts for a side business he was developing, investment advice and help securing a new job.

The case is U.S. v. Riley, U.S. District Court, Southern District of New York, No. 13-cr-00339. (Reporting by Nate Raymond in New York; Editing by Leslie Adler)

White Plains

Joseph Desmaret

Desmaret to be sentenced in June for bribery

Lohud

Steve Lieberman, slieberm@lohud.com 5:48 p.m. EDT April 26, 2015

WHITE PLAINS – Former Spring Valley Deputy Mayor Joseph Desmaret faces 7 to 9 years in federal prison when U.S. Judge Kenneth Karas sentences him June 18.

Desmaret, 58, pleaded guilty Jan. 28, 2014, to mail fraud and Hobbs Act extortion for selling his vote to support a development scheme proposed by a corrupt developer working for the FBI.

Desmaret, a Democrat who worked for Ramapo, admitted to taking \$10,800 from FBI operative Moses "Mark" Stern of Monsey.

Stern went undercover to work off a potential prison sentence for fraud involving a Monsey house mortgage and a \$126 million rip off of Citigroup for 11 shopping centers down south. The Rockland District Attorney's Office uncovered the fraud and worked with the U.S. Attorney's Office.

Last week, a federal judge convicted former Spring Valley Mayor Noramie Jasmin of bribe-related charges resulting from a plot inspired by the FBI and Stern to build a catering hall-community atop the 30-foot deep ditch on Route 45 outside the village's municipal complex.

Jasmin, 51, a longtime trustee and one-term mayor, could face up to 10 years in prison when sentenced Aug. 7 by Judge Colleen McMahon. Jasmin demanded a 50-percent ownership in the business from Stern.

Stern also fronted the FBI-sting operation that brought convictions against state Sen. Malcolm Smith, D-Brooklyn, several New York City Republican Party officials and a Queens councilman.

Stern paid more than \$100,000 in bribes in an attempt to secure the GOP mayoral nomination for Smith, who promised to provide Spring Valley with a \$500,000 road grant for Stern's phony project. Former Bronx GOP boss Jay Savino, a Rockland resident and a fired tax attorney for Clarkstown, pleaded guilty and cooperated with prosecutors.

The convictions highlight the crackdown by U.S. Attorney Preet Bharara. Additional arrests and indictments, including former Assembly Speaker Sheldon Silver, D-Manhattan, have followed.

Buy Photo

Former Spring Valley Mayor Noramie Jasmin outside the U.S. Courthouse in White Plains. (Photo: File photo/The Journal News)

The arrests cost Desmaret and Jasmin their seats on the Spring Valley Board of Trustees. Desmaret has declined to seek re-election, while Jasmin lost at the polls in 2014.

FBI agents caught Desmaret on seven audio and video tapes discussing the bribe and taking the money.

"I'm deeply sorry every day of my life and wish I could turn back the calendar," Desmaret said in court when pleading guilty in January 2014.

His lawyers, former Rockland District Attorney Kenneth Gribetz and prosecutor Deborah Wolikow-Loewenberg, have said they would try to persuade the judge to give Desmaret a lesser sentence.

The Rockland District Attorney's Office initially focused on Stern because of allegations of a mortgage scheme for a run-down house next to his Remsen Avenue mansion.

Stern's partner, Ephraim Frankel was convicted of wire and mail fraud for filing false closing costs in Stern's Citigroup scam.

Twitter: @lohudlegal

Money Laundering and Asset Forfeiture

NYPL/Benjamin Franklin documents

Ben Franklin Manuscript Plot Thickens With Federal Probe

By ADAM KLASFELD

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MANHATTAN (CN) - In a new wrinkle for priceless documents, federal prosecutors unveiled a grand jury investigation into the alleged theft of a Ben Franklin manuscript and other antiquarian documents currently subject to civil litigation.

"A federal grand jury in this district is investigating the theft of eight priceless books from the New York Public Library," Assistant U.S. Attorney Margaret Graham wrote in a letter on Thursday.

Earlier this month, Nassau resident Margaret Tanchuck filed a lawsuit calling the library's theft allegations a spurious attempt to lay claim to manuscripts have been in her family for nearly 30 years.

She found the contested works in her father's jewelry store while administering her parents' estates, her lawyers wrote on April 3.

Dated from between 1759 and 1766, the Franklin workbook alone would fetch more than \$2 million, the complaint states.

There is no dollar value assigned to the seven sacred texts also named in the complaint, including five Bibles from the 17th to 19th centuries and two printings of the "Acta Apostolorum" dated between the 18th and 19th centuries.

At the time, library spokeswoman Angela Montefinise told Courthouse News there was "no question" that the materials belonged to the library, and they would better serve researchers and patrons than financially benefit a Long Island family.

Prosecutors in the Southern District of New York threw their hat in the library's ring.

"The library informed the United States Attorney's Office of the theft of the contested items, and the office opened a grand jury investigation into the potential violation of federal law that had occurred within its jurisdiction," their letter states.

Library spokesman Ken Weine was quick to celebrate the new revelation.

"This material was evidently stolen from the library, and now someone is trying to profit from it," Weine said in a statement. "We will aggressively work to ensure that this material is returned to the public domain where it belongs."

Tanchuck's lawyer Dan Arshack from the Manhattan-based firm Arshack, Hajek & Lehrman asserted, in block capital letters, there was "no evidence" of theft.

"The fact that the books have not been in the NYPL's possession for almost 30 years does not establish a theft," he wrote in an email. "If the NYPL had ever claimed a theft or announced that the items were lost during that almost 30-year period the situation might be different. Instead, the NYPL did nothing. Their silence might well be evidence that the books left the NYPL in an ordinary and legal manner."

The grand jury investigation continues here in federal court, and the civil litigation is taking place in Mineola, N.Y.

Matters of Interest

Preet Bharara branches out

Capital New York

By Dana Rubinstein and Colby Hamilton 6:43 p.m. | Apr. 24, 2015 | follow this reporter

In his first speech since a judge rebuked him for trying former Assembly speaker Sheldon Silver in the press, U.S. Attorney Preet Bharara argued that without “public awareness,” there can be no reform.

“Without public awareness, there is no focus,” said Bharara. “Without public awareness, there is no resolve. Without public awareness, things tend to never change.”

Bharara delivered his remarks in what he readily acknowledged was an unusual setting—the venerable Regional Plan Association’s annual assembly on infrastructure at the Waldorf Astoria.

“Some might wonder, since when does R.P.A. stand for ‘random prosecutor appearance?’” he joked.

The 1,100-person banquet hall tittered knowingly.

The association’s announcement earlier this month that Bharara would keynote its annual meeting fanned speculation that Bharara harbors higher political aspirations.

The U.S. Attorney, after all, has hardly shied away from attention. His speeches about Albany corruption, which have become standing-room-only affairs, now seldom fail to generate headlines.

In February, he was spotted at Vanity Fair’s Oscar party in Hollywood, where he reportedly mingled with Anjelica Huston, Jane Fonda, and Steve Martin.

Last month, at the invitation of the event’s organizer, Bharara hobnobbed with reporters at Inner Circle, the annual City Hall roast. (He received an ethics clearance to attend from his superiors at the U.S. Department of Justice.)

The R.P.A. Assembly, which was on Friday consumed by earnest debates about the relative merits of gentrification and the future of manufacturing in the metropolitan region, didn’t seem an obvious venue for Bharara either.

“There is a lot of buzz that Preet is everywhere and has been very outspoken, and many people think that demonstrates that he is interested in running for elective office,” Democratic political consultant George Arzt told Capital.

Many of the people who think that—or at least who encourage others to do so—are in Albany, where even the lawmakers who aren’t actually subject to investigations by Bharara’s office are impugned by his broad denunciations of the culture of corruption in the capital.

Aside from Silver, Bharara is investigating the Cuomo administration for its handling of an anti-corruption commission, and is reportedly presenting evidence to a grand jury in connection with a separate investigation into the alleged involvement of Senate Majority Leader Dean Skelos in securing a profitable deal for a company that employed his son.

Seemingly every powerful officeholder in Albany, in other words, now has an interest in presenting Bharara’s actions as political in nature—possibly as so much groundwork-laying for his own eventual run for unspecified

office. And Bharara's willingness to push the boundaries of acceptable public commentary past the point that a judge will tolerate can only help them make that case.

In a rare rebuke earlier this month, U.S. District Judge Valerie Caproni chided Bharara for his "media blitz" following Silver's arrest and said he had "strayed so close to the edge of the rules" that Silver had a "non-frivolous argument that he fell over the edge to the Defendant's prejudice."

Caproni's comments echoed what the New York Times reported are simmering tensions between Bharara and the judiciary, with one unnamed judge telling the paper that "[a]ll of these incidents show a certain lack of humility."

A spokeswoman for the R.P.A., which extended the invitation to Bharara to speak at today's event, said that he was simply there to talk about good governance, which is a timely issue in infrastructure circles thanks to the scandals afflicting the Port Authority of New York and New Jersey. He did that, evocatively.

We "should assert with ever growing insistence that we want and need honest government, that we want and need government that dwells on a high plane, government matched to big challenges, rather than mired in petty corruptions, government that produces, rather than procrastinates, government that does, rather than dawdles," Bharara said. "Why do we want and need that? So that the bold blueprints you sketch today become artifacts of big things actually built, rather than dusty reminders of abandoned aspirations. Our future depends on it."

He argued that if planners want to see their grand visions realized, they need to "make sure there is a plan to deter and repel the buzzing bees who will inexorably and corruptly be drawn to the huge pots of honey that will fund those grand plans."

Bharara did not mention Silver nor Skelos by name, but he argued that Albany corruption should be of particular concern to planners, given Washington gridlock and their increasing reliance on state funding.

"With the gridlock in Washington increasingly lacking the will to tackle big, thankless problems like infrastructure, we need a state government that is willing to—and capable of—tackling the pressing public policy challenges of our times," he said.

Those with the long view on Bharara, such as Stu Loeser, who served in U.S. Senator Chuck Schumer's office at the same time as the future U.S. Attorney, argue that the political speculation is so much smoke without fire.

"He's a career prosecutor. He's not a political person," Loeser told Capital after the R.P.A. speech was announced. "He came to Chuck after years of experience in the Southern District. That's where he's gone back to. People see what they want to see, or what they fear to see, in him."

Preet Bharara's speech fuels speculation of a run for office

NY Post

By Aaron Short

April 25, 2015 | 12:54am

US Attorney Preet Bharara fueled speculation he's got his eye on public office by turning up as the luncheon speaker at the wonky Regional Plan Association's annual conference Friday.

"I think he's become a major figure in New York," said former city Traffic Commissioner Sam Schwartz, one of hundreds of influential New Yorkers in the audience at the Waldorf Astoria meeting.

The group's president, Thomas Wright, said "more than a few people" asked what Bharara's interest was in regional planning.

The prosecutor himself joked that he was an unlikely choice as speaker.

"Given my day job, it's reasonable to ask what am I doing here," he said.

Bharara claimed corruption in Albany has a "massive opportunity cost" that hinders long-term planning.

One former public official speculated Bharara was laying the groundwork for his next job.

"If Hillary doesn't win and the Republicans take the White House, we will likely have a new US attorney," the former official said.

Sharon Levin to Leave U.S. Attorney's Office for WilmerHale, Joining Other Ex-Prosecutors

NYT

By BEN PROTESSAPRIL 26, 2015

Sharon Cohen Levin is joining WilmerHale as a partner after serving 29 years as a prosecutor, mainly in the forfeiture unit of the United States attorney's office in Manhattan. Credit Sasha Maslov for The New York Times

Over the last 24 years, Sharon Cohen Levin built a multibillion-dollar operation — not as a trader or banker, but as a prosecutor.

As head of the asset forfeiture unit at the United States attorney's office in Manhattan, Ms. Levin helped induce corporate giants like JPMorgan Chase, BNP Paribas and others to pay some \$15 billion in penalties. With the unit returning cash to crime victims — and recovering such stolen artifacts as a Mongolian Tyrannosaurus skeleton — Richard B. Zabel, the deputy United States attorney in Manhattan, nicknamed her the “Babe Ruth of forfeiture.”

But now, as the Babe did nearly a century ago, Ms. Levin is switching teams.

On Monday, the law firm WilmerHale is expected to announce that it has hired Ms. Levin as a partner in New York, ending a 29-year prosecutorial tenure, 24 of which she spent in the forfeiture unit.

Ms. Levin had become such a fixture in the Manhattan office — and until now had resisted the allure of the revolving door — that some colleagues just assumed she would never leave.

“It’s been an incredible 24 years, but there comes a time to move on and give others a chance,” Ms. Levin, 54, said in an interview. Noting that “I’ve actually never worked at a firm,” she added: “For other people, that time probably comes a lot earlier.”

For the United States attorney's office in Manhattan, which under Preet Bharara has become synonymous with headline-grabbing Wall Street prosecutions, Ms. Levin is leaving at a moment of transition. As the economy gathers steam and the demand for white-collar lawyers grows, the office has lost a number of prosecutors to private firms, a cycle playing out across the Justice Department.

The revolving door often opens onto WilmerHale, so much so that Rolling Stone once mocked it as “S.E.C. West” (a reference to the location of its Washington office in relation to the agency's headquarters there).

Ms. Levin will join WilmerHale soon after Anjan Sahni, who had led Mr. Bharara's Wall Street task force, became a partner at the white-shoe firm. She will also reunite with Boyd M. Johnson III, Mr. Bharara's former deputy, who is a co-chairman of WilmerHale's investigations and criminal group.

Ms. Levin said she was drawn to WilmerHale partly because of its emphasis on government service. Robert S. Mueller III, the former F.B.I. director, is a partner. So is William R. McLucas, the onetime S.E.C. enforcement chief.

Ms. Levin, who will join next month as a member of Mr. Johnson's group and the financial institutions practice, is expected to advise banks on money laundering and other issues that have drawn regulatory scrutiny.

“Financial crime risk is the buzzword at banks today, and she’s been thinking about that long before these issues were in the headlines,” Mr. Johnson said.

Ms. Levin, who began at the Justice Department’s civil division in Washington, joined the forfeiture unit in Manhattan in 1991. She has led the unit since 1996, serving under six United States attorneys during that period.

“It’s hard to think of another person who has had such an important impact over so many years in so many S.D.N.Y. cases,” said Lorin L. Reisner, a Paul, Weiss partner who previously supervised Ms. Levin in the United States attorney’s Manhattan office.

With about 25 employees, Ms. Levin’s asset forfeiture operation at the United States attorney’s office is the largest of its kind. It’s also the most lucrative. In 2014 alone, the unit recovered about \$7 billion in illegal proceeds — the most ever recovered by a single office.

Mr. Bharara is fond of remarking that “taxpayers have gotten a great return on their investment” in his office.

Much of that \$7 billion stemmed from BNP, the French bank that prosecutors accused of doing business with Iran. JPMorgan handed over \$1.7 billion for failing to thwart the Bernard Madoff Ponzi scheme.

Still, such efforts have drawn critics, including judges and defense lawyers, who complain that prosecutors seize property without proof of criminal wrongdoing.

The Justice Department counters that it has reined in the most aggressive efforts, and prosecutors typically earmark the money for crime victims. When victims are not identifiable, proceeds often pay for law enforcement initiatives like undercover operations.

For stolen property — such as the Mongolian dinosaur bones or the “Portrait of Wally,” an oil painting that Nazis stole from a Jewish woman in 1939 — the office either returns the items or arranges for victim compensation.

Ms. Levin, who was raised outside Chicago with two brothers — Steven M. Cohen, who became a prominent lawyer in his own right, and Rich Cohen, a best-selling author — said the art case was her favorite.

“I had bigger cases that involved more complex issues, but ‘Portrait of Wally’ was special,” Ms. Levin recalled. It “enabled me to use today’s forfeiture laws to correct a historical injustice.”

Benjamin Weiser contributed reporting.

A version of this article appears in print on April 27, 2015, on page B3 of the New York edition with the headline: Prosecutor Who Brought in Huge Fines Under U.S. Attorney Joins a Big Law Firm. Order Reprints|Today's Paper|Subscribe

Robert Patterson Jr., Lawyer and Judge Who Fought for the Accused, Dies at 91

NYT

By SAM ROBERTS

APRIL 24, 2015

Robert P. Patterson Jr., a former federal judge who championed legal rights for the accused and the convicted and fought to hold guards and state troopers accountable for the casualties among inmates after the Attica prison rebellion in 1971, died on Tuesday in Manhattan. He was 91.

The cause was multiple myeloma, his daughter Anne Patterson Finn said.

The uprising at the Attica Correctional Facility in upstate New York resulted in the deaths of 32 inmates and 11 corrections officers and civilian employees. All but one guard and three inmates were killed in what one prosecutor branded a wanton “turkey shoot” by state troopers.

Afterward, Judge Patterson, who was practicing law at the time, served on a five-member panel appointed to protect the constitutional rights of Attica inmates.

In 1975, when he was a vice president of the bar association in New York City, he represented Malcolm H. Bell, a former chief assistant prosecutor in the Attica case, who contended in a letter to the New York attorney general, Louis J. Lefkowitz, that Mr. Bell’s former boss, Anthony G. Simonetti, the chief prosecutor, had possibly covered up crimes by law enforcement officers.

Mr. Patterson argued to Gov. Hugh L. Carey’s counsel, Judah Gribetz, that the charges would have been “relatively easy to prove” had they been prosecuted earlier. It was Mr. Patterson’s request for an independent inquiry that prompted the governor to appoint a special state investigator, Bernard S. Meyer, a former judge on the Court of Appeals, the state’s highest court. Mr. Meyer found “no intentional cover-up” but concluded that there had been “serious errors in judgment” that led to “an imbalance in the prosecution.” As a result, a special prosecutor was appointed in December 1975.

“In my opinion,” Mr. Patterson said at the time, “the prosecution, whether by intention or by poor administration and serious errors in judgment, as found in the report, has permitted so much time to pass as to render futile any attempt to prosecute successfully any crimes by law enforcement officers against inmates.”

In effect, the special prosecutor, Alfred J. Scotti, concurred. In February 1976, Mr. Scotti, a former chief assistant district attorney in Manhattan, recommended, “in the interests of justice,” dropping charges against 13 inmates and the sole state trooper who had been indicted. The prisoners had been charged with assault or kidnapping, and the trooper with recklessly discharging a shotgun during the siege.

Judge Patterson, whose father was a federal judge, may have seemed destined for a career in the law, but he was rebellious as a youth and was still considering some other profession even after college. “I didn’t want to be a lawyer when I went to law school because I didn’t want to follow in my father’s footsteps,” he told The New York Times in 1975.

Those footsteps were formidable. In addition to being a judge, Robert P. Patterson Sr. was under secretary of war during World War II and secretary of war under President Harry S. Truman from 1945 to 1947, when he was largely credited with integrating the armed forces.

The younger Judge Patterson changed his mind, he later said, when he realized that a legal career presented opportunities for public service. As a young lawyer, he worked for two months as a Legal Aid Society volunteer in the criminal courts, an experience he credited with inspiring an enduring commitment to equal justice, regardless of race or class.

Robert Porter Patterson Jr. was born in Manhattan on July 11, 1923. His mother, the former Margaret Winchester, managed Fair Oaks, the family farm in the Hudson Valley. Robert grew up in Putnam County, attended the Millbrook School and enlisted in the Army Air Forces after completing his freshman year at Harvard. He was discharged four years later as a captain after flying 45 combat missions as a navigator and earning the Distinguished Flying Cross.

After graduating from Harvard and then Columbia Law School, he joined Donovan, Leisure, Newton, Lumbard & Irvine and later worked as an assistant counsel to the state crime commission and as an assistant federal prosecutor. In 1956 he joined Patterson, Belknap & Webb (later Patterson, Belknap, Webb & Tyler), the firm founded by his father.

The elder Judge Patterson was killed along with more than 30 others in 1952 in the crash of a twin-engine American Airlines Convair in a residential area of Elizabeth, N.J.

That same year, Robert Jr. married the former Bevin Daly. She died in 2011. In addition to his daughter Anne, he is survived by two other daughters, Margaret and Katherine Patterson; a son, Paul; and four grandchildren.

Among the lawyers he recruited to the firm were Zachary W. Carter, a former federal prosecutor and now New York City's chief lawyer; a former United States attorney general, Michael B. Mukasey; and former Mayor Rudolph W. Giuliani. Judge Patterson also served as president of the New York State Bar Association and the Legal Aid Society in New York and chairman of Prisoners' Legal Services.

"I don't think I'm a person who believes that there shouldn't be any prisons, period," Mr. Patterson once said. "But even a violent criminal is entitled to the basic elements of human dignity."

In 1988, on the recommendation of Senator Daniel Patrick Moynihan, a Democrat, President Ronald Reagan appointed him to the Federal District Court for the Southern District of New York. Judge Patterson, a Republican, became a senior judge in 1998, but never officially retired. In 1990, Judge Patterson ruled that the New York City Transit Authority could not require drug testing of all its employees, only those with safety-related jobs. That same year, he declared unconstitutional proposed federal restrictions on access to telephone-pornography services.

Judge Patterson had no qualms about sentencing the former president of Guatemala, Alfonso Portillo, to prison for nearly six years in a money-laundering case in 2013. But he was vexed by federal guidelines that forced him to impose a sentence of two years and three months in 2003 on a South Korean immigrant, a postal worker who had fired seven shots from a handgun at the United Nations building to protest North Korea's treatment of its citizens. The judge said the man was making a political statement rather than intending to inflict injury.

In 1995, Judge Patterson voided a 25-cent New York City Transit fare increase, to \$1.50, coupled with a proportionally smaller increase for commuter railroads. He said the increase was a civil rights violation because most subway and bus riders were black or Hispanic, while most suburban rail commuters were white. He was overruled by an appellate court.

Judge Patterson could be quirky and sardonic in the courtroom. During a hearing in the transit fare case, he interjected, "Objection sustained," as a lawyer posed a question to a witness — before the opposing lawyer had even registered a complaint.

A version of this article appears in print on April 27, 2015, on page D8 of the New York edition with the headline: Robert Patterson Jr., Lawyer and Judge Who Fought for the Accused, Dies at 91. Order Reprints|Today's Paper|Subscribe

Event Vetting

Government employees, particularly high-level officials like United States Attorneys, are subject to ethical restrictions governing the types of events they may attend. Some restrictions relate to benefits, including luncheons, dinners, awards, and tokens of appreciation they may accept. Other restrictions relate, among other things, to participation in events that are sponsored by persons who do business with or lobby the Government; that have a fundraising component; where it may appear that official attendance is being used to promote the event or the sponsor; or where elected officials may be in attendance. To assist us in vetting compliance with government ethical restrictions, we would appreciate it if you could provide the following information. If you do not have specific information for each response, please provide such general or descriptive information as you currently have. Please do not hesitate to call the Office's Government Ethics Advisor, (b)(6), (b)(7)c at (b)(6), (b)(7)c or e-mail him at (b)(6), (b)(7)c to discuss this.

1. Name, date and time, and location of event.
The John Jay Iselin Memorial Lecture Series
Thursday April 6, 2017, 6:30pm lecture followed by reception
The Great Hall at The Cooper Union
The Foundation Building, 7 East 7th Street, NY, 10003
2. Format of event (e.g., cocktails; presentations; speeches; and/or meal).
6:30 – 7:30 Lecture followed by a Q&A if possible
7:30 –9:00 Private reception with President (b)(6) and VIP guests
3. Estimated cost per attendee of event.
Lecture is free and open to the public
4. Are any attendees being charged to attend the event?
No, admittance into lecture is free
 - If so, who (in general) is being offered free attendance, and who is expected to pay? The costs associated with the lecture and the reception are paid for by an endowment in the name of former Cooper Union President John Jay Iselin
5. Name of entity extending the invitation and link to web site (if any).
The Cooper Union. www.cooper.edu
 - Is the entity extending the invitation registered with the Secretary of the Senate and the Clerk of the House of Representatives as a lobbyist pursuant to Section 1603(a) of Title 2 of the United States Code? N/A.
6. Sponsor of event if different from above.
 - Is the sponsor of the event registered with the Secretary of the Senate and the Clerk of the House of Representatives as a lobbyist pursuant to Section 1603(a) of Title 2 of the United States Code? N/A

7. Names of additional entities that will be recognized for sponsorship or support of the event. (b)(6)
(b)(6) will be acknowledged and thanked.
8. How many persons are expected to attend? 500+ for lecture, 75+ for reception
9. Demographics of expected attendees (e.g., lawyers, law enforcement officials, business leaders, Cooper Union students, students from other local universities and law schools, and other members of the community, etc.) This is a public program and the general public is also invited to attend. The reception will include Cooper Alumni and donors who are business leaders, members of the New York arts and culture community, and other professionals.
10. Are any elected officials expected to attend and, if so, what is their expected role?
Not Expected
11. Will there be any political activity at the event (i.e., any activity directed toward the success or failure of a political party, candidate for a partisan political office or partisan political group, for example, any speeches urging people to vote for or against a particular candidate or political party)?
No political agenda or activity is planned
12. Is there a fundraising component to the event? (e.g., program advertisements; dinner ticket price; silent auction)? If so, please describe.¹ There is no fundraising component
13. Expected role of U.S. Attorney (e.g., simple attendance; remarks; speech) Mr. Bharara is invited to deliver a lecture on a topic of his choosing that would interest the community at large, and to attend a reception with the current Cooper Union (b)(6)
(b)(6)
14. If the U.S. Attorney is being honored: N/A
- What are the criteria your organization applies to determine who should be honored for this specific award? N/A

¹ For events that involve any fundraising leading up to or during the event: The United States Attorney may not participate in any active fundraising activity with respect to the event. Nor may the U.S. Attorney allow his name, position, or title to be used for any fundraising activity for your organization. If applicable, you may list his name as an awardee and/or speaker on the program and on invitations issued not more than 30 days prior to the event, along with other information about the program. He may not be listed on any "save the date" notices. Failure to comply with these limitations may preclude the U.S. Attorney from appearing at the event. If the U.S. Attorney is giving an official speech, he may be seated and have photos taken as appropriate for a speaker at the event, but you may not use his photo in connection with any other fundraising efforts.

- What is the internal process by which your organization selects potential honorees? N/A
- For what specific public service or achievement do you wish to honor the U.S. Attorney? N/A
- Did any of the accomplishments of the U.S. Attorney which you wish to honor directly affect the organization or its members? (Describe.) N/A
- Do any of the board members or host committee or senior staff have any matters pending before or involving the United States Attorney's Office for the Southern District of New York? N/A
- Please provide a description and the value of any award item (if the award item is a plaque, certificate or trophy of little intrinsic value, you may so indicate). N/A
- Who else is expected to be honored at the event? N/A

15. If the U.S. Attorney is making a presentation, who else is expected to be making a presentation/be on a panel? (b)(6) will introduce him?) The US Attorney is the only speaker.

- Will the U.S. Attorney be presented with a token or memento in appreciation for his presentation?
 - i. ☒ Nothing
 - ii. ☐ Plaque or other memento of little intrinsic value
 - iii. ☐ Other. Please describe, including its value.

16. Describe any special seating arrangements for U.S. Attorney, *e.g.*, dais, general seating (depending on the nature of the event, the U.S. Attorney may or may not be able to accept "dais" seating.) We will provide reserved seating in the Great Hall for all guests of the US Attorney's office.

17. Promotion of the event: please provide a copy of or link to the invitation/promotional material for the event (or if not available, for the prior year's event). Attached are invitations/announcements to previous year's events.

Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178-0060
Tel: 212.309.6000
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Morgan Lewis
C O U N S E L O R S A T L A W

(b)(6)

(b)(5), (b)(6), (b)(7)c

February 28, 2011

Preet Bharara
United States Attorney
for the Southern District of New York
One St. Andrews Plaza
New York NY 10007

Dear Preet:

I write on behalf of Fordham University School of Law and my partners at Morgan Lewis to invite you to deliver the Twelfth Annual A. A. Sommer, Jr. Corporate, Securities and Financial Law Lecture at Fordham Law School on October 27 or November 3, 2011.

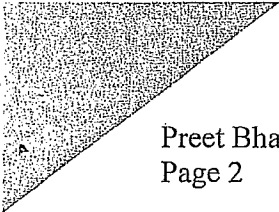
The Office's longstanding focus on securities law violations and recent high profile prosecutions in the insider trading area is of keen interest to the financial services industry, lawyers and academics. We would be honored to have you speak at this year's event.

Fordham and Morgan Lewis created the lecture series in 2000 to honor Al Sommer, a distinguished SEC Commissioner and a former partner of our Firm. Prior speakers include

(b)(6)

(b)(6) was a Morgan Lewis partner from 1979 until 1994, when he became Counsel to the Firm and its clients. He was a skilled private practitioner for many years and a prolific author and commentator on a wide range of securities law topics. (b)(6) is probably best known for his service as an SEC Commissioner from 1973 to 1976 and as Chairman of the Public Oversight Board of the American Institute of CPAs.

Fordham Law School hosts the lecture. The evening typically consists of a brief welcome by (b)(6) opening remarks by one of my partners and the lecture by the featured speaker. The lecture, which usually lasts for about 20 minutes, and would be on a topic of your choosing, is followed by a cocktail reception in the rotunda of the Fordham Law School Library. We usually attract about 200 lawyers, academics, students and financial services professionals.



Preet Bharara, Esq.
Page 2

Morgan Lewis
C O U N S E L O R S A T L A W

We would be delighted if you would deliver this year's lecture. I will follow up with you, but please feel free to call me in the meantime.

Sincerely,

(b)(6)



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Chief Information Officer

Room 2300 Bicentennial Building
600 E Street, NW
Washington, DC 20530

(202) 252-6230
FAX (202) 252-6100

MEMORANDUM

TO: Honorable Preet Bharara
United States Attorney
Southern District of New York

FROM: (b)(6)
National Records Manager (b)(6)

SUBJECT: Creation and Disposition of Records

The purpose of this memorandum is to advise you of federal records management requirements as they relate specifically to the position of the United States Attorney. We have learned that advising you of these matters is best done as you assume this key position, rather than as you prepare to leave it.

The Archivist of the United States has determined the official records of all United States Attorneys (*and anyone serving in that position, regardless of appointment type and regardless of the format of the records*) are permanent federal records and are to be retired to the Archives at the end of your tenure (see: NARA Disposition Schedule N1-118-97-1 on USANet).

The Federal Records Act states that a federal record is documentation that is created or received in any medium pursuant to law or in the transaction of agency business, and is preserved, or appropriate for preservation, because it provides evidence of an Agency's organization, function, decision, procedures, and transactions. (See 44 U.S.C. Chap. 21, 29, 31, 33; accord 36 CFR 1200-1299).

Examples of records you create include all subject, project and correspondence files (including E-mails, press releases and official speeches), as well as working hardcopy and electronic files such as calendars, appointment books, travel records, and telephone calls. Please take care to keep purely personal materials completely separate from official business to avoid having to comb through tools like the network calendar specifically to extract those personal items when you depart.

In addition to being necessary for the security of government information, the prohibition from using non-governmental (personally-owned) systems is doubly important for USAs because non-governmental systems do not capture records. Our Rules of Behavior governing all network users require that, "[p]ersonally-owned (non-governmental) hardware and software may not be used for work purposes."

Most of the materials you receive or create in the conduct of agency business are records needed for future reference, and also will document the accomplishments of your public service. Department of Justice Order 2710.8C, *Removal and Maintenance of, and Access to Documents*, sets forth an approval process mandated should you desire to remove even copies of these records. When the time comes for you to leave this position, if you wish to request copies of federal records and other documentary materials, you will need to be very specific including the physical location of these items. Your request must be in writing and is to be addressed to the Director, Executive Office for United States Attorneys and mailed to the EOUSA Office of General Counsel (GCO). GCO will work with you to resolve any issues arising from your request, and will advise the Director, EOUSA as to what may be approved.

If you have any questions, please feel free to contact me at telephonically at (b)(6) or via Email using (b)(6). Your District Records Coordinator is also an excellent source for federal records management advice and guidance.

cc: (b)(6)

Departing US Attorney Records Memo USAPP-RIM-02 (Rev.4/20/2017)

From: (b)(6) (USAEO) {or USAEO-USAttY Records}
To: [USA's System Manager]; [USA's Records Coordinator]
CC: USAEO-USAttY Records
Subject: Departing USA Records

{Optional Text} {Good Morning; Hello; or Good afternoon} {I appreciate you for contacting me; or other text}.

Since your USA is leaving (or vacating the USA position if Acting), I want to review the actions that need to be taken to preserve the USA's records. I know that you are aware of the records and information management (RIM) process for USAOs. Still, let me highlight some points to frame next steps, which you should consider in conjunction with your review of USAPP 3-13.300.004 Network Account Records Management.

The Archivist of the United States at the National Archives and Records Administration (NARA) has determined the official records of all United States Attorneys (*and anyone serving in that position, regardless of appointment type and regardless of the format of the records*) are permanent Federal records and are to be retired to the Archives at the end of his or her ten (see NARA Disposition Schedule N1-118-10-1006 United States Attorneys Official Records).

The Federal Records Act states that a Federal record is any documentation created or received in any medium pursuant to law or in the transaction of agency business, that is preserved, or appropriate for preservation, because it provides evidence of an Agency's organization, function, decisions, procedures, and transactions. (See 44 U.S.C. Chap. 21, 29, 31, 33; accord 36 CFR 1220, et seq.). Key examples of USA records are subject, project and correspondence files (including e-mails, press releases and official speeches), as well as calendars, appointment books, and travel records. While the official preservation format is currently paper, OClO RIM is also acquiring electronic copies.

The customary User Sponsor for the USA is the district's FAUSA. The FAUSA has insight and information on local policies and procedures and is in the position of authority to oversee work or answer questions related to files or directories on the local server and in hard copy form.

Here's a synopsis of steps in USAP 3-13.300.004:

1. If the USA wishes to keep copies of records, that approval comes through submitting to EOUSA's General Counsel's Office (GCO) a completed copy of USAP Attachment 5: Departing/Transferring User's Request for Copies of ESI. Typically GCO receives these requests via its general mailbox (USAEO.GCO.Duty@usdoj.gov); the User Sponsor also call GCO Duty at 202-252-1600. However, if your USA has departed on short notice, I want to highlight that the USA may select and request copies later, when your USA is a former employee.
2. The Systems Manager should check to ensure that Tech Center has tagged the USA's USAMail account for **permanent** preservation. Also, it is a good idea to add a note on Attachment 5 that the user is a USA

Departing US Attorney Records Memo
USAPP-RIM-02 (Rev.4/20/2017)

with a note to permanently capture email.

3. Paper records may be retained on-site while needed for current business. We are required to keep USA records for 15 years before transferring them to the National Archives. When no longer needed for regular use, the USA's records may be transferred to your Federal Records Center.
4. The electronic copy of the USA's Federal records should be transferred to me via USAfx or if necessary, copied to a disk and sent to me in OCIO's RIM Staff using the shipping procedures set forth in the Secure Shipping USAP (No. 3-13.200.005).
5. Also, don't forget to check with your district's FOIA contact to ensure preservation of any material responsive to pending requests relevant to the departing USA.
6. Check with your district's Litigation Hold Coordinator (i.e., typically the Civil Chief) to address current or pending district-level requests relevant to the departing USA. If the current USA is an "affected user" for the purposes of the litigation hold, please contact me in my role as the National Preservation Officer to make arrangements to properly move relevant files to the Litigation Hold server. The USA or FAUSA should review the nationwide litigation hold page to ensure that the USA does not have any records that may be responsive to a currently implemented nationwide litigation hold.

Finally, please note that I send a memorandum to U.S. Attorneys at the beginning of their appointment, not the end, and I need help from districts to ensure that I am aware of new USAs, including those who are formally "Acting."

I am here to help with any specific questions that may arise.

{Thanks very much for checking in}

(b)(6)

REQUEST FOR RECORDS DISPOSITION AUTHORITY		LEAVE BLANK (NARA use only)	
To: NATIONAL ARCHIVES & RECORDS ADMINISTRATION 8601 ADELPHI ROAD, COLLEGE PARK, MD 20740-6001		JOB NUMBER <u>N1-118-10-6</u>	
1. FROM (Agency or establishment) U.S. Department of Justice		Date Received: <u>9/17/10</u>	
2. MAJOR SUB DIVISION Executive Office for U.S. Attorneys		NOTIFICATION TO AGENCY	
3. MINOR SUBDIVISION United States Attorneys' Offices within the 94 Judicial Districts		In accordance with the provisions of 44 U.S.C 3303a, the disposition request, including amendments is approved except for items that may be marked "disposition not approved" or "withdrawn" in column 10.	
4. NAME OF PERSON WITH WHOM TO CONFER (b)(6) National Records Manager	5. TELEPHONE (b)(6)	DATE <u>25T Oct 14</u>	ES (b)(6)
6. AGENCY CERTIFICATION I hereby certify that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal on the attached <u>2</u> page(s) are not needed now for the business of this agency or will not be needed after the retention periods specified; and that written concurrence from the General Accounting Office, under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies,			
☒ is not required ☐ is attached: or ☐ has been requested.			
DATE <u>8/18/2010</u> (b)(6)			
7. ITEM NO.	8. DESCRIPTION OF ITEM AND PROPOSED DISPOSITION	9. GRS OR SUPERSEDED JOB CITATION	10. ACTION TAKEN (NARA USE ONLY)
	United States Attorneys' Official Records	N1-118-97-1 , as well as N1-118-94-1 <u>N1-118-97-1</u> <u>Items 1</u> <u>N1-118-94-1</u> <u>Items 1-2</u>	

United States Attorneys' Official Records

A. Organizational Context

The position of United States Attorney was established by the Judiciary Act of 1789 (1 Stat. 73, § 35); and the mission of the United States Attorneys' Offices (USAOs) is to prosecute criminal offenses and litigate civil matters on behalf of the United States in all 94 Federal judicial districts nationwide.

This schedule applies to all individuals appointed (**regardless of appointment type**) to the position of the United States Attorney. Records are of a mixed media nature (e.g., paper, digital).

B. Non-Case File Official Records created by/for each United States Attorney within the 94 Judicial Districts

- B1. All United States Attorneys' subject, project, and correspondence files, including press releases and official speeches documenting programs, activities, and projects as well as working files, official calendars, appointment books, schedules, itineraries, briefing books and binders, logs and other records documenting meetings, and telephone calls; handwritten meeting notes where specific guidance, direction, or tasking is memorialized; meeting agenda and minutes where DOJ is the lead or host (to include annotated copies as well as substantive drafts); files relating to specific activities and any other records which document evidence of decisions, provide specific guidance, direction or tasking; documenting events, telephone calls, trips, visits and other activities of these officials that contain unique substantive information that document or relate to the activities of the United States Attorneys which contain substantive information.

Filtered per agreement of SAO Records Officer - see email dated 2/11/14
Disposition: Permanent. Cut off at the end of each U.S. Attorney's tenure. ~~Transfer to the Federal Records Center 2 years after cutoff, or when no longer needed for business purposes.~~ Offer to the National Archives and Records Administration 15 years after cutoff. *Electronic records are authorized for pre-accession.*

- B2. Records documenting the United States Attorney's discretionary local operating policies, organizational structure (e.g., organization charts) and procedures, including internal district-specific office directives and/or processes guiding the performance of district management functions and litigation.

(b)(6) **Disposition: Permanent.** Cut off at the end of each U.S. Attorney's tenure. ~~Transfer to the Federal Records Center 2 years after cutoff, or when no longer needed for business purposes.~~ Offer to the National Archives and Records Administration 15 years after cutoff. *Electronic records are authorized for pre-accession.*

- B3. Records documenting the United States Attorney's local standard operating procedures implementing routine administrative functions such as time and attendance, hours of duty, and other such matters controlled by federal government-wide statutory, regulatory, or Department of Justice and/or Executive Office for United States Attorneys policies and procedures.

Disposition: Temporary. Destroy when superseded.

United States Attorneys' Official Records

C. **Cases Handled Personally by the United States Attorney** are subject to the NARA approved disposition schedule appropriate to the case itself, and evaluated for historic significance based on case substance rather than the prosecutorial role of the United States Attorney.

Filing Instructions

NOTE: Non-Record material typically includes "information only" copies of correspondence, directives, forms and other documents on which no administrative action is recorded or taken; routing slips and transmittal sheets adding no information to that contained in the transmitted material; duplicate copies of documents maintained in the same file extra copies of reports, briefing books, or other publicly available information used to conduct research; catalogs, trade journals, and other publications that are received from Government agencies, commercial firms, or private institutions and that require no action and are not part of a case on which action is taken. These non-records should be destroyed immediately when no longer needed for conducting business.

UNITED STATES ATTORNEYS' PROCEDURES	USAP No. 3-13.300.004	
	Network Account Records Management	
	Effective Date:	May. 10, 2010
	Last Updated:	May. 2, 2014

1. PURPOSE

To establish records management procedures for the Executive Office for United States Attorneys (EOUSA) and the 94 United States Attorneys' Offices (USAOs) when requests are made for the creation, change, deletion or transfer of network User accounts ("Users") for all EOUSA/USAO system Users. **This USAP replaces USAP 3-16.200.002, Network User Accounts: Add, Change or Transfer (originally published March 2, 2005).**

These procedures are intended both to support IT network system security requirements and to facilitate compliance with federal records management responsibilities. To achieve these goals, this USAP establishes a key new role – "User Sponsor" – and re-emphasizes the role of the designated Records Coordinator to train and advise all EOUSA and USAO Users and User Sponsors in federal records management laws, regulations, and responsibilities for proper preservation of all official federal records created by the User, regardless of format (hardcopy or electronic). This USAP also establishes procedures to ensure proper access, retention and disposition of official federal records created using network accounts and existing **only in electronic form**. For detailed information on records management policies and procedures applicable to all forms of federal records (both paper and electronic), see USAP 3-13.300.001 - National Records Management Program.

2. SCOPE

This USAP applies to EOUSA and USAOs and relates solely to internal procedures for these components of the Department of Justice (the "Agency").

NOTE: These procedures deal with the general records retention requirements applicable to most Users. Please note, however, that sometimes electronically stored information (ESI) – which may include records and non-records – must be preserved beyond its otherwise applicable retention schedules such as when there is a litigation hold. If there is a litigation hold, USAP 3-13.300.003, Litigation and Legal Hold Procedures MUST be used and all responsive ESI and paper documents must be retained until the hold is lifted. **If a User is leaving the USAO, the User Sponsor must verify that any ESI requested by the User to take with him/her is not subject to an**

active litigation hold. If it is, the request is to be denied until the resolution of the litigation hold.

3. REFERENCES

- Federal Records Act (44 U.S.C. § 3101, et seq.)
- Basic Records and Information Management Guidelines – JMD Office of Records Management Policy (applicable to all approved Network Users)
- Record Disposition Schedules (SF-115s) approved by NARA specifically for EOUSA (formerly Records Group 60) and USAO (Records Group 118)
- USAP 3-13.200.004, Media Disposal
- USAP 3-16.200.003, Network Account Security Management
- USAP 3-13.300.001 - National Records Management Program
- USAP 3-13.300.003, Litigation and Legal Hold Procedures
- DOJ Order 2710.8C, Removal and Maintenance of, and Access to, Documents
- General Records Schedule 24, Information Technology Operations and Management Records (see USAP ¶7 below)
- NARA Approved Schedule for the Disposition of United States Attorneys' Records: SF-115 Nos. N1-118-97-1 and N1-118-94-1
- District Systems Managers' Operations Guide
- DOJ Records and Information Management Course

4. BACKGROUND

Access to the EOUSA/USAO network is granted to individuals solely for the purpose of fulfilling official duties or functions. In the course of fulfilling such duties or functions, all EOUSA and USAO network Users ("Users") routinely create and receive paper and electronic materials (e.g., paper documents, eMail, electronic documents, photographs, charts, etc.) which constitute "federal records" as defined by statute and regulation are subject to varying retention requirements. Generally, materials (regardless of physical form or characteristics) reflecting or evidencing official Agency business (including, as examples, official organization, functions, policies, decisions, procedures, or other operational matters) meet the statutory definition of "federal records" and must be preserved for the periods specified either in applicable General Records Schedules (GRS) or Records Disposition Schedules (SF-115s) approved by the National Archives and Records Administration ("NARA") for EOUSA and USAO unique records.

Federal records created by Users are the property of the organizational unit for which the work was done. For example, a User working for one district (District A) and then transferring to another district or DOJ Organization (e.g. District B or Tax Division) is obligated to leave the records created in District A with District A. DOJ Order 2710.8C, Removal and Maintenance of, and Access to, Documents, and Section C of this USAP provide guidance on how departing Users may **request** *copies* of official records.

Materials which do not constitute "federal records" (electronic or paper copies of official records) typically may be destroyed when no longer needed for operational purposes. For additional detailed information regarding basic records and information management responsibilities, including the definition of an official record, see the Office of Records Management (ORMP) pamphlet Basic Records and Information Management and review USAP 3-13.300.001 - National Records Management Program.

5. DEFINITIONS

- **Electronically Stored Information (ESI)** refers to any "information created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software" within the meaning of the Federal Rules of Civil Procedure ("FRCP") and the Rules' "Safe Harbor" provision (below). See Electronically Stored Information, 4 Nw. J. of Tech. & Intell. Prop. 171, ¶ 9 (Withers, K.) (Spring 2006). "ESI" includes "writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained . . ." FRCP 34(a)(1)(A). Electronically stored records (ESR) defined below are normally a smaller subset of ESI.
- **Federal Records** are defined by the Federal Records Act and related regulations established by the National Archives and Records Administration (NARA) refer to "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for

convenience of reference, and stocks of publications and of processed documents are not included." 44 U.S.C. §3301 (NARA site).

- **Electronically Stored Records (ESR)** refer to those "federal records" electronically stored on EOUSA/USAOs systems, **where the electronic version is the only version existing** ("born digital").
- **Network Users (or Users)** refers to **all** persons granted access to EOUSA/USAOs computer systems, including employees, detailees, contractors, interns, student volunteers, Special Assistant United States Attorneys ("SAUSAs"), Private Debt Collection Counsel, expert witnesses, and others granted access to the EOUSA/USAOs Information Technology infrastructure (aka "network" or "system"). NOTE: Users placed for less than 30 days in the position of the United States Attorney will review the ESI produced during that period to assure preservation of Permanent Records.
- **Departing Users (or Departees)** refers to EOUSA/USAOs' System Users whose access and use are discontinued for any reason, whether due to retirement, resignation, termination, transfer to a new position or contract, detail, or otherwise.
- **Documentary Materials.** All paper documents and electronically stored information (ESI) associated with an EOUSA/USAOs' User, including Federal records, non-record materials, and personal papers, regardless of the nature of the medium or the method or circumstances of recording.
- **Litigation Hold (or Legal Hold)** refers to the preservation procedures EOUSA/USAOs will implement in response to the following triggering events, as examples:
 - The onset of civil litigation, or once civil litigation is reasonably anticipated, against the Department of Justice involving EOUSA/USAOs and/or an EOUSA/USAOs employee;
 - Court order;
 - Congressional subpoena; and
 - Agency directive by or through the Office of Inspector General (OIG) or the Office of Professional Responsibility (OPR), among others.
- **National Records Manager** is the federal employee designated by the Director, EOUSA, to oversee the development and implementation of the official records management program for EOUSA and the USAOs. The National Records Manager also serves as the Assistant Director, Records and Information Management Staff, located in the EOUSA Office of the Chief Information Officer.
- **NOC/TechOne** refers to the Network Operations Center and TechOne Help Desk for EOUSA/USAOs.
- **National Preservation Officer** is the federal employee designated by the National Records Manager to oversee EOUSA and USAOs' compliance with

mandatory preservation resulting from litigation holds, and is responsible for coordinating these matters with all USAO Litigation Hold Coordinators, USAO Records Coordinators, and the NOC.

- **USAO Records Coordinator** refers to the federal employee designated within each USAO and EOUSA to oversee the USAOs implementation of day-to-day records management responsibilities in coordination National Records Manager, while also providing day-to-day oversight of the USAOs' records management program in conjunction with the National Records Manager.
- **User Sponsor** is the EOUSA or USAO **federal employee** – *other than the Systems Manager* – who knows the business information and works with the Systems Manager to determine network access needs required by the new User. The User supervisor (if a federal employee) or the Contracting Officer's Representative (COR, if a contractor), are examples of logical User sponsors. The Systems Manager is not to add a User to the network without the signature of a User sponsor.

6. PROCEDURES

A. Requesting Network Access

1. User Sponsors will provide a copy of the Acknowledgement of Duty to Preserve Federal records to the User and complete the Account Management Form (see USAP 3-16.200.003, Network Account Security Management). Systems Managers are not to accept forms that do not contain the User Sponsor's signature.
2. All Users (new and existing, no exceptions) must sign and attach **Attachment 1**, "Acknowledgement of Duty to Preserve Federal Records" form. This form must accompany the Account Management Form for new Users (see USAP 3-16.200.003, Network Account Security Management). All Users are encouraged to view the DOJ Records and Information Management Course (see: <http://usanetsp.usa.doj.gov/it/ocio/records/Pages/DOJRecordsandInformationManagementTrainingCourse.aspx>), printing out the course completion certification and providing it to the designated Training Officer for entry into LearnDOJ.
3. All new **and any existing Users** being placed into the **United States Attorney** position or the **EOUSA Director** position (even on an "acting" or otherwise "temporary" basis), must will be informed about briefed with regard to the permanent status of all official records created by the individuals while serving in those positions, including calendars, tasks, notes, eVOIP .WAV files sent to email, etc. **Attachment 2**, "Sample Letter to the United States Attorney" will be used by the National Records Manager (NRM), EOUSA for this purpose to insure assure these individuals receive notification. The Network Operations Center (NOC/TechOne) will also be notified by the EOUSA NRM of the appointment of

new and/or interim/acting USAs for the purpose of adjusting USAMail accounts. When other "special" Users are appointed (e.g., Special Attorneys or Prosecutors connected with a high profile case likely to be judged historic and therefore the records will also be deemed permanent), USAOs are to consult with the EOUSA National Records Manager as those Users must also be appropriately informed as to records preservation requirements and the NOC notified of any special status to be affixed to USAMail accounts. **Attachment 2** will be modified to notify the "special User" of what has been determined regarding his/her records to assure he/she is aware and is working with us on this important process.

B. User Changes: Network Requirements

1. Departing User (leaving the Department and/or federal service)

- a. As soon as the User Sponsor knows a User is leaving EOUSA or a USAO, the local Records Coordinator and the Systems Manager must be notified, preferably in writing.
- b. The Systems Manager will contact TechOne to open a ticket for the Departing User. After a ticket has been open, the Systems Manager will receive an email from TechOne that will be requesting additional information to complete the process.
- c. Prior to departure, the **User Sponsor** will conduct an exit briefing with the departing User to insure assure all original federal records are properly placed in the appropriate official record-keeping system and will review, with the User, the location of all electronically stored federal records. The departing User will complete **Attachment 3**, "Departing/Transferring User Exit Briefing Acknowledgement" form.
- d. **No departing User account will be deleted until the USAO Records Coordinator and the User Sponsor have determined the proper official record-keeping file for those electronic records and have certified those records are properly placed therein (e.g. proper shared drive file or paper file). Access to the departing User account will be disabled and electronically stored information will be transferred to the User Sponsor of record or sponsor designee. The User account will not be deleted until Attachment 4, "Authorization to Delete User Account", is signed by the local Records Coordinator and User Sponsor. Once the Account has been deleted, the Systems Manager will also sign Attachment 4.**
- e. If an "on network" records review described in "c" above for the purpose of determining proper disposition cannot be completed by the User sponsor and Records Coordinator within a 20 calendar day window, then all ESI will be moved to external media (e.g. CD/DVD) and given to the **User sponsor** for appropriate handling and timely disposal as any ESI on external media will need to be searched if in existence and a litigation hold/preservation order is issued.

- f. After the CD/DVD containing departed User ESI has been reviewed and all record material properly handled, the CD/DVD is to be destroyed using secure media disposal procedures.

2. Users transferring to another USAO or other Department of Justice

Component. (NOTE: To enable a transferring User to retain his/her original email address (e.g., My.Name@usdoj.gov), the process described above for "departing Users" is the same for transferring Users).

- a. As soon as the User Sponsor knows a User is leaving EOUSA or a USAO, the local Records Coordinator and the Systems Manager must be notified, preferably in writing.
- b. The Systems Manager will contact TechOne to open a ticket for the Transferring User. After a ticket has been open, the Systems Manager will receive an email from TechOne that will be requesting additional information to complete the process.
- c. Prior to transfer, the **User Sponsor** will conduct an exit briefing with the User to insure all original federal records are properly placed in the official record-keeping system and will review, with the User, the location of all paper and electronically stored records. The transferring User will complete **Attachment 3**, "Departing/Transferring User Exit Briefing Acknowledgement" form.
- d. The User account (and/or external email address) will not be deleted but will be transferred to the new OU and/or DOJ Component.
- e. Do not destroy transferring User's electronic records until the User Sponsor has determined the proper official record-keeping file for those records and they have been placed in that official file.
- f. If a records review described in "d" above for the purpose of determining proper disposition cannot be completed by the User's Sponsor or designee within a **20 day window**, then all ESI will be moved to external media (e.g., CD/DVD) and given to the **User Sponsor** or designee for appropriate handling in coordination with the Records Coordinator.

3. Name Changes

For name changes, a written request must be made by the User but does not need to be approved by the User Sponsor. The Systems Manager will contact TechOne to open a ticket for the Name Change. After a ticket has been open, the Systems Manager will receive an email from TechOne that will be requesting additional information to complete the request. Systems Managers are to follow Section 5.5 of the District Systems Manager Operations Guide for name changes.

C. Departing and/or Transferring User Request for Electronic Copies of Records

1. Any departing/transferring Users requesting copies of federal records are to complete **Attachment 5**, "Departing/Transferring User Request for Copies of ESI".
2. **For USAO Federal Employee Users:** The User Sponsor may approve User requests for copies EXCEPT for requests from United States Attorney. All United States Attorney requests must be directed to the Office of General Counsel, EOUSA for approval. This category includes law students.
3. **For EOUSA Federal Employee Users:** The User Sponsor may approve User requests for copies except for requests from the Director, EOUSA. Those requests must be forwarded to the Assistant Attorney General for Administration.
4. **For All NON-EMPLOYEE Users:** Any requests from non-employee Users must be directed to the National Records Manager, EOUSA for additional guidance based on the unique facts associated with that non-employee User.

NOTE: DOJ Order 2710.8C establishes DOJ-wide policy and procedures on removal from Department of Justice custody, and requests for maintenance of or access to documentary materials, by current, departing, and former employees. It establishes the responsibilities of component heads with regard to such materials, and establishes a Department Document Committee to provide recommendations regarding requests for removal of or access to nonpublic documents. This order does NOT apply to Users who are NOT DOJ employees (e.g., contractors, state and local officials) requesting copies of records, and any requests from non-employee Users must be directed to the National Records Manager for additional guidance based on the unique facts associated with a non-employee User.

DOJ Order 2710.8C (§7.a) specifically prohibits the removal of the following documentary materials:

- (1) Any federal record
- (2) The only copy of any documentary materials involved in the conduct of the affairs of the Department or any other components of the Federal Government, whether or not judged to be records (including any copy that is unique, for example because it contains the signature or initials of the writer, reviewers, and/or concurring parties);
- (3) Any documentary materials (whether or not judged to be records) the removal of which will create such a gap in the files as to impair the completeness of essential documentation;
- (4) The only copy of indices or other finding aids (whether or not judged to be records) that are necessary to the use of office files;
- (5) Portions of documentary materials (whether or not judged to be records) that constitute classified information;

(6) Portions of documentary materials (whether or not judged to be records) that constitute information subject to the Privacy Act of 1974, 5 U.S.C. § 552a; and

(7) Portions of any other documentary materials (whether or not judged to be records) that constitute information the disclosure of which is prohibited by law, such as grand jury, tax, and trade secret information.

All other types of nonpublic Federally-owned documentary materials, including privileged materials, may be removed only with specific approval, as described in paragraph 8 of DOJ Order 2710.8C.

A publicly available document such as a brief filed in court or a newspaper article may be removed without approval.

7. RECORDS RETENTION

- A. All records created by the United States Attorney (regardless of appointment type) are permanent records and become the property of the National Archives and Records Administration per the existing approved records schedules.

The disposition of all the completed attachments generated using this process are covered by General Records Schedule 24, Information Technology Operations and Management Records, Paragraph 6, User Identification, Profiles, Authorizations, and Password Files (excluding records relating to electronic signatures). Destroy/delete inactive file 6 years after User account is terminated or password is altered, or when no longer needed for investigative or security purposes, whichever is later.

EOUSA and USAOs will determine and will specify who should maintain the official record copy of these documents (e.g., Systems Manager, local Records Coordinator). Proper maintenance of these records will be reviewed by Evaluation and Review Staff teams.

8. VERSION HISTORY

- A. The version history below reflects a summary of key changes between USAP versions. NOTE – Each USAP's POC is to keep the following "Version History Action Log" up-to-date and to insert key changes in the "ANNOUNCEMENT" below:

	DATE	VERSION HISTORY ACTION LOG – SUMMARY OF ACTION/CHANGES
1.	Jan. 4, 2013	Updated to correct the POC contact information, update Attachment 2's title/text, and fix certain hyperlinks.
2.	Aug. 30, 2013	Minor edits and template change.
3.	May. 2, 2014	Minor edits and link fixes (e.g., in References above and Attachment 1 below).
4.	<u>Click to Insert</u>	<u>[Summary of changes.]</u>
5.	<u>Click to Insert</u>	<u>[Summary of changes.]</u>

6.	<u>Click to Insert</u>	<u>[Summary of changes.]</u>
7.	<u>Click to Insert</u>	<u>[Summary of changes.]</u>
8.	<u>Click to Insert</u>	<u>[Summary of changes.]</u>
9.	<u>Click to Insert</u>	<u>[Summary of changes.]</u>
10.	<u>Click to Insert</u>	<u>[Summary of changes.]</u>
11.	<u>Click to Insert</u>	<u>[Summary of changes.]</u>

Attachment(s):

1. Attachment 1: Acknowledgement of Duty to Preserve Records (rev. 3/10/14)
2. Attachment 2: Federal Requirement to Document the Public Service of U.S. Attorneys
3. Attachment 3: Departing/Transferring User Exit Briefing Acknowledgement
4. Attachment 4: Authorization to Delete User Account
5. Attachment 5: Departing/Transferring User's Request for Copies of ESI

<i>POC Name & Email:</i>
<i>Title / Staff:</i>
<i>Phone:</i>

(b)(6)